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THE UNIVERSITY OF ALBERTA

REGULATION OF FOREIGN INVESTMENT IN INDIA

BY

NAVEEN KUMAR MAHAMWAL

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE
OF MASTER OF LAWS

FACULTY OF LAW

EDMONTON, ALBERTA
SPRING 1987

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Supervisor

Co-supervisor

Date November 17, 1986

ABSTRACT

India is the seventh largest country with the second highest population in the world. The country's economy today is in a process of rapid development. During the last three decades, the country has made considerable progress in practically every field. This study has been undertaken to examine foreign investment policy of India and discuss various enactments in so far as they relate to the regulation of foreign investments.

A country's policy towards foreign investment depends largely on its natural and human resources, economic and political systems and level of technological development. India inherited a colonial economy with an impoverished and narrow industrial base. After independence in 1947, Five Year Plans were formulated and implemented. During the first three Five Year Plans (1951-66), the country made rapid strides in technological development and the government's approach became increasingly selective towards foreign investment. Besides, the government's policy has always been one of economic and technological self-reliance and self-sufficiency. In recent years, the Government of India has liberalized foreign investment policy with a view to update its technological base and promote export-oriented and import substitution ventures. Presently, India looks upon foreign investment as a vehicle for the transfer of technology.

Although foreign investment does not fall into the category of top priorities of India, its importance for the country's economic and industrial development can not be denied. The country should so frame its foreign investment policy, that it attracts beneficial foreign

investments and closes the door for investments that adversely affect the country's economy, self-sufficiency, development of indigenous technology and growth of local enterprises.

Current foreign investment policy limits foreign investors to minority equity participation, generally, but majority foreign equity participation is also permitted to the companies engaged in priority sector production, export-oriented production or requiring sophisticated technology in their operations. Majority foreign equity has a number of disadvantages like foreign control over the project and market, technological dependence, loss of economic independence, reflection of foreign laws, economic and industrial priorities and import of foreign cultural values. Therefore, the government should not permit majority foreign equity to foreign investors unless the importation of that particular technology is very essential in the national interest and no other source exists for obtaining the technology.

As a result of the government's selective approach regarding technical and financial collaboration, the flow of technology has stopped in a number of areas and India is lagging behind in technology in those areas. The government should open more fields for technical collaborations, of course, with minority equity participation, in order to allow continuous flow of technology.

PREFACE

Regulation of foreign investment is one of the most complicated and debatable issues in today's world. There can be no uniform foreign investment policy which is good for all the countries in the world. For example, the U.S.A. and Japan have two opposite approaches toward foreign investment but the economy of both the countries is flourishing. Moreover, a country's foreign investment policy continues to change from time to time, according to its economic situation, political environment, priorities, technological and industrial development.

The central concern of this study is to examine the policy and legal and procedural aspects of foreign investment in India, an important country in the third world. An endeavour has been made to discuss the foreign investment policy of the country from an economic as well as technological development point of view. In addition to this, an attempt has been made to study international joint-ventures in reference to India. The study consists of 6 chapters. Chapter I is introductory; Chapter II relates to foreign investment and collaboration policy; Chapter III concerns the legal aspect of foreign investment; Chapter IV deals with procedure for foreign investment; Chapter V deals with international joint-ventures; and the final chapter consists of conclusions and recommendations for Indian foreign investment policy.

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Naveen Mahamwal

TABLE OF CONTENTS

CHAPTER	PAGE
I. INTRODUCTION	1
Footnotes Chapter 1	6
II. FOREIGN INVESTMENT AND COLLABORATION POLICY	7
A. DEVELOPMENT OF FOREIGN INVESTMENT POLICY	9
1. Early Developments (Pre-1961 situation)	9
2. Developments Betwee 1961 to 1969	10
3. Developments between 1970 to 1983	13
(a) Remittances for Dividend and Technical collaboration	14
(b) Adverse Balance of Payments	14
(c) Foreign Exchange Guidelines of 1973.	15
(d) 1976 Amendmends to Foreign Exchange Guidelines	16
(e) Industrial Policy Statement of 1977.	17
(f) Prohibited Activities to Foreign Capital	18
(g)Industrial Policy Statement of 1980 .	19
(h) Technology Policy 1983	20
4. Recent Policy Liberalizations	20
B. PRESENT FOREIGN INVESTMENT POLICY	22
1. Equity Participation	23
2. Effect of Majority Foreign Equity Limits	24
3. Preferred Industries for Foreign Investment..	31
4. Industries in Free Trade Zones	32
5. Investment from Oil Exporting Developing (OED) countries	33
6. Investment by Non-residents of Indian Origin	34
(a) Investment in Indian Banks	34
(i) Ordinary Non-Resident Account	34
(ii) Non-resident External Account	34
(b) Investment in Government Securities. Units, etc.	35
(c) Investment in Industry	35
(i) Without Right of Repatriation	35
(ii) With Right of Repatriation .	37
(d) Investment in Immovable Property ...	39
(e) Special Facilities Available to Non-residents of Indian Origin.....	40
(f) Tax Concessions to Non-resident Investors of Indian Origin	41

CHAPTER	PAGE
C. STATISTICAL ASPECT OF FOREIGN INVESTMENT	42
Footnotes Chapter II	47
III. LEGAL ASPECTS OF FOREIGN INVESTMENT	52
A. THE COMPANIES ACT, 1956	52
1. Branches of Foreign Companies	52
2. Incorporation of Indian Company	55
(a) Types of Companies	55
(b) Procedure for Incorporation	56
(i) Preparation of Memorandum of Association	56
(ii) Preparation of Articles of Association	57
(iii) Registration of the Company	58
B. THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951	58
C. THE INDUSTRIAL POLICY RESOLUTION, 1956	60
D. THE FOREIGN EXCHANGE REGULATION ACT, 1973	61
E. THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969.....	65
F. INCOME TAC ACT, 1961	68
1. Corporate Taxation	68
(a) Rates of Income Tax on Companies ..	69
(b) Deductions	69
(c) Tax Incentives	72
(i) Tax Holidays	72
(ii) Tax Concessions in Backward Areas	72
(iii) Tax Concessions for small Scale Industrial Undertakings Set Up in Rural Areas	73
(iv) Tax Holidays for New Industrial Undertakings in Free Trade Zones .	73
(v) Investment Allowance	73
(vi) Deduction for Export Turnover	74
(vii) Tax-exemption for Foreign Technicians	74
2. Foreign Investment and Income Tax	74
(a) Taxation of World-wide Earnings ...	75
(b) High Tax Rates	76
G. THE COMPANIES (PROFITS) SURTAX ACT, 1964	79
Footnotes Chapter III	81

CHAPTER		PAGE
IV.	FOREIGN INVESTMENT APPROVALS AND APPROVAL PROCEDURE	84
	A. APPROVALS	84
	B. APROVAL PROCEDURE	84
	Footnotes Chapter IV	91
V.	INTERNATIONAL JOINT-VENTURES AND INDIA	92
	A. OBJECTIVES OF INTERNATIONAL JOINT-VENTURES	93
	B. IMPORTANCE OF TRANSFER OF TECHNOLOGY	94
	C. INDIAN EXPERIENCE ON TRANSFER OF TECHNOLOGY	98
	D. INDIAN JOINT VENTURES	99
	1. Foreign Joint Ventures in India	99
	2. Indian Joint-Ventures Abroad	100
	3. Third Country Joint-Ventures 101	
	E. NON-RESIDENTS OF INDIAN ORIGIN AND JOINT-VENTURES ...	102
	Footnotes Chapter V	104
VI.	CONCLUSIONS	107
	A. LEGISLATION	109
	B. GENERAL POLICY	110
	C. MAJORITY FOREIGN EQUITY	111
	D. EFFECT OF SELECTIVE APPROACH TOWARDS FOREIGN COLLABORATION AND TRANSFER OF TECHNOLOGY	112
	E. JAPANESE INVESTMENT IN INDIA AND ITS IMPLICATIONS ..	114
	F. COMPANY LAW	117
	G. ANTITRUST LAW	117
	H. INCOME TAX LAW	118
	I. APPROVAL PROCEDURE	120
	J. RECOMMENDATIONS	121
	Footnotes Chapter VI	124
BIBLIOGRAPHY		125
APPENDIX I	Foreign Exchange Guidelines of 1973	128
APPENDIX II	Priority Industries	135

CHAPTER		PAGE
APPENDIX III	Clarification and Amplification of Guidelines issued for Administering Section 29	139
APPENDIX IV	Illustrative List of Industries where no foreign collaboration, financial or technical is considered necessary	142
APPENDIX V	Illustrative List of Products which would be Eligible for Special Facilities on the ground of 100% Exports	144
APPENDIX VI	LIST OF INDUSTRIES INCLUDED IN THE 1ST SCHEDULE TO THE INDUSTRIES (Development and Regulation) Act, 1951	146
APPENDIX VII	Conditions for Exemption from Licensing in respect of Units with Investment in Fixed Assets not exceeding Rs. 50 million ...	152
APPENDIX VIII	LIST OF ITEMS RESERVED FOR PRODUCTION IN SMALL SCALE SECTOR	153
APPENDIX IX	LIST OF INDUSTRIES GOVERNED BY SPECIAL REGULATIONS	180
APPENDIX X	LIST OF INDUSTRIES RESERVED FOR PUBLIC SECTOR	183
APPENDIX XI	LIST OF INDUSTRIES OPEN TO PUBLIC AND PRIVATE SECTORS	184
APPENDIX XII	NUMBER OF FOREIGN COLLABORATIONS APPROVED BY THE GOVERNMENT OF INDIA DURING THE PERIOD 1977-1983	185
APPENDIX XIII	Foreign collaborations sanctioned in India from 1957-1984	186

LIST OF TABLES

Table	Description	Page
I	Foreign Collaborations and Investment in India Approvals	43
II	Quantum of Foreign Investment Approvals during 1983 ...	45
III	Non-resident Capital Inflow	46
IV	Corporate Tax Rates 1985 - 86	70
V	Corporate Tax Rates 1986 - 87	71

LIST OF CHARTS

Chart	Description	Page
	Present set-up of the SIA	87

CHAPTER I

INTRODUCTION

India occupies an important place on the world's industrial map. The country has made rapid economic progress since its independence in 1947. India inherited a colonial economy in which whatever development took place was designed to enable colonial powers to take away India's raw material at throwaway prices and sell the end products finished in England at very high prices. The country had a very bad economic situation at the time of Independence.[1] There was no food, no electricity, no roads. India had to import simple manufactured articles like pens, pencils, needles, cloth, pins, etc. to say nothing of automobiles and other sophisticated machinery. But today's India manufactures highly sophisticated aircrafts, builds its own atomic reactors and erects steel plants abroad.[2] No field of science and technology has been left untouched - be it nuclear technology, space technology or antarctica expeditions. Presently, India is the world's eighth largest producer of industrial goods,[3] with the fifteenth largest G.N.P.[4] and is the world's number one manufacturer of textiles and textile machinery.[5]

The purpose of this study is to examine the foreign investment policy of India and to discuss various enactments in so far as they relate to regulate foreign investment. An attempt has also been made to study future effects of the policy on economic and industrial development of the country.

The major areas of concern in regard to regulation of foreign investment are: (a) sharing of the ownership and control of resources

between foreign enterprises and host governments; (b) regulation of the activities of foreign enterprises. It may be recalled that the Group of the Eminent Persons[6] in their report to the United Nations has called upon host countries to develop effective regulatory mechanisms in both these areas in order to ensure that foreign enterprises would conform to national development plans.

The foreign investment area can be looked at from a cost-benefit viewpoint. The host country has something the investor needs dearly, that of easy access to domestic markets, access to cheap labour, raw materials etc. The host country would like the added employment, foreign capital inflow and widened solid industrial base, with all of its inherent spinoffs. The control a foreign country exercises over its foreign investment allows it to weigh these relative needs and to bargain for concessions and trade-offs. The host government will throw in a tax break or subsidy and in turn will demand export requirements, local content requirements, location of the plant in a specified area, local equity participation, etc. In most situations it is the host country which has the upper hand (unless it is an extremely poor country unable to meet its basic needs) and may extract concessions from investors for allowing them to access the local markets and tap domestic resources. The problem arises in balancing a country's needs for foreign investment to spur employment and industrialization, and its desire to control ownership of its resources and to ensure that nationals play a leading role in directing and controlling its economy.

From the above, it is clear that all countries look more favourably upon foreign investments which provide an opportunity for domestic equity participation, export promotion, technology transfer and local employment.

Many countries have "local equity participation" as a virtual necessity before foreign investment proposals will be approved. Greece for example, requires government participation in large projects where the investment exceeds 400 m drachmas ($4m Cdn app.)[7]; Italy and the United Kingdom will sometimes tie access to domestic capital markets to local equity participation.[8] India allows foreign equity up to a maximum of 40% unless the industry is wholly export oriented or involves sophisticated technology not available in the country.[9] Japan considers permitting joint ventures where local equity is in majority.[10]

Most countries exert some degree of foreign investment control. Throughout the world the varying degrees of control range from very strict control, as in Japan and Mexico, to an almost totally open system as in the United States or the Netherlands.[11] The reasoning behind these investment controls is not uniform. Generally they can be traced back to social and/or cultural backgrounds, political strategy, and are very rarely primarily the result of the host country's overall economic performance. Indeed, it is often noted that there is very little correlation between national economic performance and the degree of liberalism or restrictionism pursued by a given country.[12] Examples in this regard are the United States and Japan, two countries whose economies are performing well and yet are at opposite ends of the foreign investment control policies.

Most countries, at the very least, impose controls to protect key sectors from being controlled by foreigners. The areas almost universally protected are: natural resources, culturally sensitive areas such as publishing, radio, television, transportation, national defence related (and support) industries, banking, insurance and public

utilities.[13] Other countries have as a general political philosophy that foreigners are not to be permitted to control "any" significant segment of the nation's economy.[14] All controls are designed to restrict foreign investment in part (to varying degrees), and serve as a tool for directing foreign investment into certain key areas. This may be based on the host country's desire to promote certain industries, to develop certain underdeveloped geographic areas of the country or to complement the domestic government's policy towards certain planned growth areas of the economy or national priorities.

Different countries adopt different techniques for restricting foreign investments depending upon its economic, social and political structure and the need of the host country. One technique is the imposition of domestic borrowing restrictions.[15] This compels investment to be financed from abroad only and may be applied to all foreign investments or only to foreign takeover of domestic enterprises. Such a restriction helps in strengthening the balance of payments and is an indirect method of controlling foreign direct investment. Italy uses such a restriction and essentially prohibits domestic financing of non-productive direct investment (i.e. takeover of existing companies) yet permits local financing for productive (new business) foreign investments.[16]

Another method of excluding foreign investments has been the restrictions, through the Articles of Association of a company, of the right of non-nationals to acquire shares in a company.[17] This method is excellent for preventing takeovers and serves to encourage foreign investments to take the shape of mergers or joint-ventures. Variations of this are seen through the use of different classes of shares, whereby

a majority of voting shares would have to remain in the hands of nationals or where foreigners are restricted to a certain type of shares (i.e. non-voting). Further control may be imposed through the requirement of a minimum number of nationals on the Board of Directors of a foreign company (e.g. Scandinavian countries, Japan).[18] Australia and Britain also prefer to see the majority of their nationals on the Board of Directors.

An important method of restricting foreign investment is to set a requirement of a minimum local equity participation, so that the control remains in the national hands. Specifying the fields of investment and nature of industries for foreign investors is another way of restricting foreign investment.

An endeavour has been made to examine various aspects of foreign investments in India and international joint-ventures in respect to India during the course of this study. The study is comprised of 6 Chapters.

Chapter I deals with the nature of the subject, control of foreign investment and various techniques adopted for restricting foreign investments.

Chapter II deals with foreign investment and collaboration policy.

Chapter III examines various legal aspects of foreign investment in India.

Chapter IV describes the approvals and approval procedure for foreign investments.

Chapter V deals with international joint-ventures, especially in relation to India.

Chapter VI consists of conclusions of this study and includes some recommendations.

Footnotes - Chapter I

[1] High Commission of India, Ottawa, India at a Glance (1985), at 3.

[2] Id.

[3] Id.

[4] Department of Economics and Statistics, Tata Services Ltd., Statistical Outline of India (1984), at 14.

[5] Publication Divisions, Ministry of Information and Broadcasting. Government of India, India 1984, at 357.

[6] U.N. Doc. E/5500/Rev. 1st/ESA/6 (1974), The Impact of Multinational Corporations on Development and on International Relations., at 33, 59 to 62.

[7] P. Artisien, P. Buckley, "Investment legislations in Greece, Portugal and Spain" (1984), 17 J. World Trade Law. 513, at 516.

[8] Foreign Direct Investment in Canada - Gray Report (1972), Government of Canada Publication, at 330.

[9] K.V. Iyer & L.R. Kumar, Foreign Collaboration in Industry (1984), Vol. II at ECR 21-30; Guidelines for Administering Section 29 of Foreign Exchange Regulation Act, 1973, Dt. Dec. 20, 1973; Clarification and Amplification of Guidelines issued for Administering Section 29 of FERA, 1973, Dt. April 16, 1976.

[10] P. Reynolds, "Foreign Investment in Japan" (1983), 18 Texas International Law Journal 175, at 190.

[11] Supra, note 8, at 330.

[12] Id., at 331.

[13] Id., at 335.

[14] Supra, note 10, at 189.

[15] Supra, note 8, at 332.

[16] Id., at 334.

[17] Id., at 333.

[18] Id., at 336.

CHAPTER II

FOREIGN INVESTMENT AND COLLABORATION POLICY

A country's foreign investment policy largely depends on its natural and human resources, economic system and technological developments. India is a fast developing country on the world map. The country is rich in natural resources and manpower[1] and as mentioned in Chapter I, has made considerable economic and industrial progress since its independence. Presently, India ranks among the world's top ten industrial powers,[2] with the fourteenth largest G.D.P.,[3] a relatively solid industrial base, and a large pool of skilled manpower has been created. India has the world's third largest pool of scientific and technical personnel.[4] In addition, there is a large reservoir of skilled and unskilled labour. As a result the country now manufactures a variety of finished products for domestic use as well as export. Presently, foreign investment is allowed where it would lead to a transfer of technology needed by the country and in export-oriented ventures.[5] Government's approach to foreign investment is becoming increasingly selective due to the technological advancements made within the country. The maximum foreign equity ceiling varies from 40% to 100% depending upon the nature of industry, export of products and availability of technical knowhow in the country.

The Industrical Policy Resolution,1948,[6] modified in 1956,[7] has provided the basis for the process of industrialization in India. The Industries (Development and Regulation) Act, 1951,[8] has been the major legal instrument through which this policy has been implemented. Under this Act, a licence is necessary for: (a) the establishment of new industries; (b) taking up the manufacture of new articles in an

existing industrial undertaking; and (c) substantially expanding the capacity of a manufacturing undertaking in an existing line of manufacture. Every entrepreneur - Indian or foreign - has to get a license under this Act. The Act also confers upon the Central Government broad powers over registered and licensed industrial undertakings: (a) to make investigations into their operations and to issue directions for changes; (b) for management and change of the industries; and (c) to control the supply, distribution and prices of their products. The Central Government has so far hardly invoked these powers vis-a-vis foreign enterprises except in the context of the price control of certain items which happen to be produced by foreign manufacturers in addition to Indian manufacturers. As for the general regulation of the foreign enterprises operating in India, the Industrial Policy Resolution, 1948, has envisaged a comprehensive piece of legislation on the subject. But no such law was enacted. Presently, all the major regulatory enactments are generally applicable to all enterprises whether Indian or foreign, although some of them contain certain special provisions concerning foreign enterprises.

India welcomes foreign investment and technology in those areas where such investment is required in the national interest. The need for foreign technology is dictated by the country's requirement to update its technological base. Technology may be accompanied by foreign equity participation though there has been a marked preference for the outright purchase of technology. The considerations determining the form of foreign investment are dependent on the status of the particular industry in the country, the need for the future growth of the industry, the nature of the technology required, and the benefits which can be derived from foreign participation in an Indian concern. In recent

years, the Indian Government has been promoting foreign collaborations as a means of increasing the manufacture of export oriented products.

A. DEVELOPMENT OF FOREIGN INVESTMENT POLICY

Foreign corporate investment in India has taken three forms: (i) branches (ii) subsidiaries and (iii) others with minority participation. Branches, which are referred to as "foreign companies" in section 591 of the Companies Act, 1956,[9] are places of business of companies incorporated elsewhere than in India. According to the Reserve Bank of India classification, a subsidiary is an Indian Company wherein a single foreign company is holding more than 50 percent of its equity capital and minority participation occurs wherein the share of foreign company in equity capital of an Indian Company is 50 percent or less. In addition to these three categories, a foreign company may enter into technical collaboration agreements with Indian companies in accordance with the rules and regulations laid down by the Government of India.

1. Early Developments (Pre-1961 Situation)

The basic policy governing foreign corporate investment in India can be traced in a statement[10] made by the first Prime Minister of India Mr. Jawahar Lal Nehru to the Parliament, on April 6, 1949. The principles enunciated therein may be briefly summarized as follows:

(1) Existing foreign enterprises would be accorded 'national treatment'. "Government does not intend to place any restrictions or impose any conditions which are not applicable to similar Indian enterprises."[11]

(2) New foreign capital would be encouraged: "Government would so frame its policy, as to enable further foreign capital to be invested in

India on terms and conditions that are mutually advantageous."[12]

(3) Remittance of profits and repatriation of capital would be allowed subject to balance of payment considerations.

(4) Fair compensation would be paid in case any foreign enterprise is compulsorily acquired.

(5) Although majority ownership by Indians was preferred, "Government would not object to foreign capital having control of a concern for a limited period, if it is to be found in the national interest and each individual case will be dealt with on its merits."[13]

(6) Vital importance is attached to rapid Indianization of personnel, but "Government would not object to the employment of non-Indians in posts requiring technical skill and experience, when Indians of requisite qualifications are not available."[14]

This policy statement did not specify areas in which foreign capital would be welcomed. However, the general policy of the government has been to allow only such foreign financial and technical collaborations as are in line with the priorities and targets set out in the Five Year Plans. Fresh foreign investment is not generally allowed in banking, financial, commercial and trading activities and in consumer industries which could be developed with indigenous knowhow.

2. Developments Between 1961 to 1969

With the launching of the Second Five Year Plan (1956-61), there was a sizeable increase in technical collaboration agreements.[15] Th adversely affected India's foreign exchange reserves and "towards theis close of fifties, with increasing foreign exchange stringency, minority foreign capital participation gained acceptance; foreign enterprise took to equity participation to provide the foreign exchange component for the import of machinery and equipment."[16]

In May 1961, Government of India issued a Press Note regarding importation of foreign technology and foreign investment which stated as follows:

> Basically the policy regarding foreign investments would be to attract foreign capital in those fields in which the country needs to develop in pursuance of the plan targets. While Government have been generally encouraging the investment of private foreign capital in the country, it is to be recognized that this has necessarily to be on a selective basis. If any project is approved for development in the private sector and, if imported plant and machinery are required, foreign capital investment would ordinarily be welcome as a form of financing the project.[17]

As stated by Iyer and Kumar:

> During the period 1951-66, the country made rapid advancement in the field of technology both in the private and public sectors. A number of chemical and engineering companies undertook research programmes. Indigenous technology made notable strides in defence, railways and electronics as well as nuclear energy. In the case of consumer goods industries, the country had not by and large, required any foreign technology even previously and this area further diminished steadily. Government's approach to foreign investment and collaboration, therefore, gradually became increasingly selective.[18]

In February 1966, the Government of India constituted a Committee[19] headed by Dr. A Ramaswamy Mudaliar as Chairman to examine the extent of the importation of foreign technology required for India's development and to suggest general guidelines regarding the type of cases in which foreign collaboration may be allowed. The Committee submitted its report on May 4, 1967.[20]

On the basis of the recommendations of the Mudaliar Committee, on January 25, 1969, the Government of India published lists of industries in which foreign capital and technical participation may be allowed. The 1969 notification[21] by way of illustration categorized industries

into three groups: (a) those in which both financial as well as tecnnical collaboration may be permitted; (b) those in which only technical collaboration may be permitted; and (c) those in which neither of them is permitted.

According to this notification, the objective of regulating foreign financial and technical collaboration is to ensure that foreign capital and technical knowhow is utilized in the manner most advantageous to the country, having regard to the current and future needs of the country and especially, to strengthen effectively its balance of payment position without injuriously affecting the growth of Indian and foreign enterprises already well established in India. In other words, import of foreign capital and technology are allowed subject to three factors; (a) non-availability of comparable indigenous resources; (b) essentiality in tne sense of contributing to development; and (c) effect on balance of payments.

On January 25, 1969, the Government of India also issued guidelines regarding foreign collaboration policies and procedures.[22] The foreign collaboration policy was liberalized with a view to bridge technological gaps existing in a number of sectors of economy. Substantially export-oriented units were treated more favourably. The principal features of the guidelines were:

(1) Effective control in a joint venture should rest in Indian hands and accordingly the foreign equity participation beyond 49% should be accepted only in exceptional cases.

(2) While considering proposals for foreign equity participation, due regard must be given to the likely earning or saving of foreign exchange.

(3) Proposal for majority foreign equity participation in new enterprises should be considered only (i) "if the main contribution of the project is in a field of technology where India has made little progress and where a great deal of initial or additional development is necessary" or (b) the amount of foreign exchange required for the project is substantially high or (c) the project is an essentially export-oriented scheme.

(4) The collaboration agreement should not contain any provision for payment of a "minimum amount of royalty related to turnover."

(5) Royalty payment should not exceed a period of 5 years from the date of agreement or from the date of commencement of production provided the production is started within 2 years from the date of agreement.

(6) Companies engaged in trading activities were allowed foreign collaboration where the exclusive object was to increase export.

3. Developments Between 1970 to 1983

Until the middle of the nineteen sixties, the conditions for foreign investment and collaboration were favourable. However, in the sixties, as foreign exchange resources of the country came under increasing pressure, the Government of India started feeling the pinch of the burden of remittances occasioned by the foreign financial and technical collaborations. In 1964, sec. 18-A was added to the Foreign Exchange Regulation Act, 1947,[23] with a view to restricting the scope of activities of foreign controlled companies and from then onward, the government seems to be pursuing a determined policy to reduce the foreign exchange cost of foreign collaboration.

(a) Remittances for Dividend and Technical Collaboration

According to the Reserve Bank of India, between 1964 and 1970, the total investment of subsidiaries rose from Rs. 132.2 crores (1322 million) to Rs. 189.5 crores(1895 million), but the percentage of their share in total capital came down from 77.3 to 70.8 percent[24] during this period. During the same period, the total investment of minority companies increased from Rs. 75.2 crores (752 million) to Rs. 116.3 crores (1163 million), but their share in the total capital came down from 32.9 to 30.3 percent.[25] The dividend remittances of these companies nevertheless, steadily went up during this period. As for subsidiaries, remittances went up from Rs. 16.65 crores (166.5 million) to Rs. 23.76 crores (237.6 million) and as for minority companies, the corresponding figures are Rs. 3.65 crores (36.5 million) and Rs. 6.18 crores (61.8 million).[26] Remittance in connection with technical collaboration during this period rose from Rs. 6.46 crores (64.6 million) to Rs. 12.3 crores (123 million).[27] All these remittances adversely affected foreign exchange reserves of India.

(b) Adverse Balance of Payments

It is beyond the scope of this study to evaluate the overall contribution of foreign collaboration to the Indian economy. However, purely in terms of balance of payments, this impact seems to be adverse. According to the Industrial Licensing Policy Inquiry Committee, during the period 1961 - 1966, all the undertakings having foreign collaboration exported only 2.9 percent of their total output, while their imports amounted to 17.1 percent of the total output.[28] No doubt, these figures are not conclusive in this regard since, in order to assess the net contribution to balance of payments, it must be analyzed how much

India would have imported in the absence of these investments. Nevertheless, the policy statements issued by the government's spokesmen invariably underline the concern of the government regarding the balance of payment impact of foreign investment. Most of the measures which the Indian Government has taken in the seventies and eighties in this regard are really aimed at moderating the drain of foreign exchange resources of the country.

(c) Foreign Exchange Guidelines of 1973

In 1973, the Government of India issued guidelines for administering section 29 of the Foreign Exchange Regulation Act, 1973[29][Appendix I]. These guidelines apply to Indian companies having more than 40% foreign equity holdings and branches of foreign companies operating in India. As per the guidelines, Indian companies engaged in (a) production of priority items i.e., items specified in Appendix I of the Industrial Licensing Policy, February 1973, [Appendix II] or (b) manufacturing activities requiring sophisticated technology, or (c) tea plantations, were asked to dilute their foreign equity to 74%. Indian companies exporting at least 60% of their total production were also asked to bring down their foreign capital to 74%. Indian companies engaged in (a) internal trading and commercial activities, or (b) manufacturing items other than priority products or products requiring sophisticated technology, or (c) plantation activities other than tea production, or (d) any other activities were asked to reduce their foreign equity to 40%.

Similarly branches of foreign companies engaged in the production of priority items or operations involving sophisticated technology, or tea plantation, or exporting 60% of their total production were asked to

convert themselves into Indian companies with foreign equity of not more than 74%. Branches of foreign companies engaged in other activities except internal trading or commercial activities, were required to convert themselves into Indian companies with foreign equity not exceeding 40%.

The above guidelines were meant for companies existing on January 1, 1974. The Government of India had given a certain period to these companies for increasing Indian participation or to convert themselves into Indian companies with appropriate amount of Indian equity, as the case may be. The government also made it clear that the companies not complying with the guidelines within the specified period, will have to wind up their business affairs in India. Thirteen companies did not comply with the above guidelines issued by the Goverment of India and decided to close their establishments in India.[30] The principal companies who wound up their business operations in India were I.B.M., Columbia Gramophone Company, Pneumatic Tool Company Ltd., Bombay, Vans Rais (India) Ltd., Calcutta and Coca Cola.[31]

(d) 1976 Amendmends to Foreign Exchange Guidelines

In 1976, the Government of India introduced major amendments to the FERA guidelines[32] [Appendix III] that apply to existing and prospective foreign investments. Companies using sophisticated technology, engaged in production of priority sector items and those exporting much of their production are treated more liberally than under the Act's original wording. Firms whose output of priority items, activities involving sophisticated technology and exports, make up not less than

75% of their total annual turnover, do not have to reduce their foreign equity to under 74%. Corporations whose exports, production of items of priority sectors and activities involving sophisticated technology combined together account for 60% or more but below 75% may retain up to 51% foreign ownership of equity provided the concerned company undertakes to export at least 10% of its total annual turnover within a period of two years from the date of approval by the Reserve Bank of India. Companies whose exports exceed 40% of their total annual turnover are also allowed to retain up to 51% foreign equity.

(e) Industrial Policy Statement of 1977

In the late seventies the Government of India recognized the necessity of continuous inflow of technology in sophisticated and high priority areas. Accordingly, the Government presented an Industrial Policy Statement[33] to the Parliament on December 23, 1977. The basic principles enunciated in the statement may briefly be summarized as follows:

(i) In order to achieve technological self reliance continuous inflow of technology is necessary in the areas where Indian technology and expertise is not adequately developed, especially in the areas of high priority and operations involving sophisticated technology.

(ii) Preference would be given for outright purchase of the best available technology and subsequently adapting it according to the need of the country.

(iii) Provisions of the Foreign Exchange Regulation Act, 1973 would be strictly enforced in respect to existing foreign companies. After completion of the process of dilution under the Act companies with foreign investment not exceeding 40 percent will be treated on par

with Indian companies in all respects.

(iv) Foreign investment and importation of technology needed for the nation's industrial development would be allowed only on the terms which are considered to be in the national interest.

(v) Where foreign technological knowhow is not needed by the country, existing foreign collaborations will not be renewed and foreign companies operating in these areas will be required to modify their activities in conformity with national priorities and within the frame work of the Foreign Exchange Regulation Act. The government will issue a list of industries where neither financial nor technical collaboration is considered necessary as indigenous technology has fully developed in these fields.

(vi) Generally, majority interest in ownership and effective control should be in Indian hands but the government may make exceptions in cases of highly export-oriented ventures or projects requiring sophisticated technology. In wholly export-oriented cases, a fully owned foreign company (Indian company with 100% foreign equity) may be considered by the government.

(f) Prohibited Activities to Foreign Capital

As mentioned above, the Government of India has issued three lists specifying the areas where (i) foreign investment is permitted, (ii) only technical collaboration is permitted and (iii) neither the financial nor the technical collaboration is permitted. On December 28, 1978, the Government of India issued a Press Note[34] along with an illustrative list of industries where no foreign collaboration (financial or technical) is considered necessary. This list was published in supersession of the above mentioned three lists published in 1969. This

list was also attached as an annexure to the Press Note of May 25, 1981[35] concerning the delegation of power to the Administrative Ministries for according approvals for foreign collaboration proposals except in cases mentioned in the list.

The Government of India has published the above list specifying the industries for which foreign investment is no longer needed, mainly because indigenous technology has been fully developed in these fields. This list of restricted products in specific industries (Metallurgical, electrical, electronics, fertilizers, chemicals, consumer goods etc.) has been given in the Appendix IV.[36] The list is however, illustrative only, since in recent years the Indian Government has permitted foreign investment in hitherto restricted areas also in order to promote the upgrading of technology in those areas. Besides the industries mentioned in the above list, investment in the field of textile industry and textile machinery is strictly banned as India is the world's largest manufacturer of textile machinery and a large number of textile industries are closed and others are facing serious market problems.

(g) Industrial Policy Statement of 1980

It was felt by the Government of India that a number of Indian industries have not been able to compete in the international markets on account of small and uneconomic scale of output. In July 1980, the government issued an Industrial Policy Statement[37] to provide the benefit of modern technology in achieving economies of scale to such industrial undertakings. The Statement lays down that in the cases where a large production will enable a company to compete in world markets and substantially increase exports, the government will favourably consider the introduction of modern technology and permitting

production capacity large enough to make the product competitive in international markets. The Policy Statement also emphasized the importance of Research and Development activities:

> 26. Government will take active measures to facilitate the transfer of technology from efficiently operating units to new units. Companies which have well established R & D organizations, and have demonstrated their ability to absorb, adapt and disseminate modern technology, will be permitted to import such technology as will increase their efficieny and cost-effectiveness.[38]

(h) Technology Policy 1983

The Government of India announced the Technology Policy, 1983,[39] on January 3, 1983. The policy emphasizes self-reliance and achieving technological competence in strategic and critical areas. Import of technology has been given due regard and is visualized in selected fields where domestic technology is not adequately developed. According to the Policy Statement the fundamentals governing the acquisition of foreign technology are:

> (i) Import of technology and foreign investment in this regard will be on a selective basis, where need has been established, technology does not exist in the country, or the time taken to generate the technology indigenously would delay the development.
>
> (ii) It is necessary to maintain international competitiveness in product services and technologies which have export potential.
>
> (iii) Ensuring an adequate scale of investment in R & D (Research and Development) for the absorption, adaptation and improvement on, and generation of, new technology.[40]

4. Recent Policy Liberalizations[41]

Recently, the Government of India has made a number of announcements to liberalize industrial policy and procedures, export-import rules and investment incentives. Important announcements in these regards may be summarized as follows:

(1) Exemption of 25 industries from licensing.

(2) A large number of electronic items have been brought out of the scope of the Monopolies & Restrictive Trade Practices (MRTP) Act.

(3) List of industries issued under section 22A of the MRTP Act has been expanded.

(4) The government has enhanced the limit of fixed assets of the companies from Rs. 200 million to Rs. 1000 million for the applicability of the MRTP Act.

(5) Investment limit for the small-scale industries has been increased from Rs. 2 million to Rs. 3.5 million.

(6) Investment limit for the ancillary units has been increased from Rs. 2.5 million to Rs. 4.5 million.

(7) Private entrepreneurs have been allowed to set up industries for manufacturing telecommunication equipment.

(8) Foreign investors and big companies are now allowed to set up electronic components manufacturing units.

(9) Capacity limit for the manufacture of professional electronic equipments and computers has been removed.

(10) All Indian companies have been allowed to manufacture micro/mini computers such as personal computers.

(11) Development and manufacture of electronic softwares has been classified as 'industry'.

(12) The Government of India has declared a definite import-export policy for a period of three years for the first time.

(13) No import license is needed to import 201 items of capital goods by actual users.

(14) The Government of India has increased the limit for import of

technology, knowhow, machinery under Technical Development Fund, from U.S. $ 0.5 million to U.S. $ equivalent to Rs. 10 million.

(15) No license is required for importing computer systems costing below Rs. 10 million.

(16) Basic rate of income-tax on companies has been reduced by 5 percent.

(17) Basic rate of income-tax on all companies has been further reduced by 5 percent beginning from April, 1986 and by another 5 percent beginning from April, 1987.

(18) Surcharge and surtax will be abolished from April, 1988.

(19) Tax holiday concession for new units has been extended for 5 more years.

(20) Custom duty on project import has been reduced to 45 percent as against 65 percent earlier.

(21) Abolition of custom duty on equipment for fertilizer project.

(22) Import duty for power projects has been reduced to 25 percent.

(23) Import duty on pulp and wood ships has been abolished.

B. PRESENT FOREIGN INVESTMENT POLICY

Since India has achieved technological capability in a number of fields, the government has identified certain industries in which foreign technology is not considered necessary.[42] Such industries are steel castings, structurals, steel pipes, electrical appliances, textiles and textile machinery, railway wagons, agricultural machinery, vegetable oils and vanaspati (Hydrogenated vegetable oil), machine tools, rubber industries, consumer goods, etc. However, import of technology could be considered in these prohibited industries also, if a

particular technology is needed for updating the existing technology to meet higher domestic requirements or to become competitive in export markets. It means that the importation of technology is permissible in almost all industries that are open to the private sector, if found in the national interest.

1. Equity Participation

Sharing of the ownership between foreign investor and local entrepreneurs is an important factor concerning foreign investment. Foreign investors want to keep the control in their hands while the host government is interested in keeping the control in local hands. According to the Foreign Exchange Regulation Act (FERA) guidelines of 1973 and 1976 [43] (Appendix I and III) and Resolution dated December 31, 1980,[44] generally foreign equity participation is to be in minority and limited to 40 percent, but manufacturing and industrial undertakings are permitted a higher foreign equity ownership on the following conditions:

(1) A company engaged in the production of priority items i.e. items specified in Appendix I of Industrial Licensing Policy, February, 1973, can retain 74 percent foreign ownership of equity. A list of the priority industries has been given in Appendix II.

(2) A company which exports 60 percent of its total production can retain up to 74 percent foreign ownership of equity.

(3) A company whose operations in priority industries (items specified in Appendix I of Industrial Licensing Policy, February, 1973), sophisticated technology and exports account for 75 percent or more of its annual turnover can retain up to 74 percent of foreign ownership of equity.

(4) A company whose exports make up at least 10 percent of turnover, and whose exports, production of items of priority sectors (items

mentioned in Appendix I of the Industrial Licensing Policy, 1973) and activities requiring sophisticated technology cover 60 percent of its annual turnover, can be permitted 51 percent foreign equity ownership.

(5) A company whose exports exceed 40 percent of its total turnover is also permitted to retain 51 percent foreign ownership of equity.

(6) Wholly export oriented units i.e. a unit which exports its entire production can retain 100% foreign ownership of equity. A list of 100% export oriented industries has been given in Appendix V.

A maximum of 5 percent of sales is set for royalty payments and normally no guaranteed payments of royalties are allowed.[45] The duration of technical collaboration agreements is generally to be confined to five years.[46]

2. Effect of Majority Foreign Equity Limits

As mentioned above, current Indian foreign investment policy permits up to 74 percent of foreign equity to the companies engaged in priority sector production or sophisticated technology. Export oriented industries are also permitted higher foreign equity limits. This means that all such companies are allowed majority foreign ownership of equity. As a result of majority of foreign equity in a company's capital, the administrative control of the company passes into foreign hands.

When the foreign companies or foreign-controlled Indian companies acquire the control of a particular industry and there is no local competitor in the market, they exploit the local consumers. Exploitation of India and other developing countries of the third world by foreign-controlled companies can be well explained by taking an

example of the drug industry. The drug industry falls under the list of priority sector production in India and therefore, pharmaceutical companies can retain up to 74% of foreign ownership of equity. In 1978, there were 45 foreign drug companies having more than 40% foreign equity out of which 25 foreign drug companies were holding majority foreign equity (51% and above).[47] Eighteen of these foreign firms belong to the U.S.A., 13 to the U.K., 6 to Switzerland and 4 to West Germany.[48] Exploitation of Indian and other third world developing countrie's drug market by these foreign drug companies is clearly indicated by the following examples:[49]

(1) Foreign drug companies used to sell Tetracycline capsules in India around Rs. 100 to 118 per hundred but when Indian Drugs and Pharmaceuticals Limited (IDPL), a public sector undertaking at Rishikesh, started production and was able to market their capsules at the rate of Rs. 46 per hundred, the foreign companies reduced their prices to Rs. 56 per hundred. It is important to note that when the bulk import prices of Tetracycline and Oxytetracycline were around Rs. 250 per Kg., these companies used to sell capsules for Rs. 100 to 118 per hundred, but when the bulk import prices increased to Rs. 650 and Rs. 749 per Kg., the same foreign companies were able to market the capsules at the rate of Rs. 55 to Rs. 63 per hundred. It was so, because the public sector plant, I.D.P.L. was able to market these products at much cheaper rates.

(2) When an Indian firm, Dey's Medical, started production in West Bengal, foreign companies were compelled to reduce the prices of some drugs from Rs. 5 to Rs. 0.90 per capsule.

(3) Tetracycline was supplied by the American Cyanamide to Cyanamide Pakistan at the rate of $270 per Kg. while the European competitive

price of the same drug was from $24 to $29 per Kg.

(4) The Bristol Company of U.S.A. supplied the same medicine to Bristol Pakistan at the rate of $190 per Kg. and to Bristol Columbia at the rate of $250 per Kg.

(5) "Pfizer", a well known name in antibiotic producers, supplied Deoxycycline (Vibramycine) to Pfizer of Pakistan and Columbia at the rate of $1750 per Kg. while the equivalent drug was being sold in Europe for $24 to $29 per Kg. Thus Pfizer charged 7000 percent profits from the developing countries.

(6) "Pfizer" sold Teramycine to Pakistan at the rate of $100 per Kg. while its price in Europe was only $13 per Kg.

(7) The Bristol Company of America supplied Ampicillin Trihydrate to Bristol Columbia at the rate of $240 per Kg., while its price in Europe was only $150 per Kg.

(8) The American company "Wyeth" supplied an antibiotic called Benzathazine Penicillin to its subsidiaries in Chile at the rate of $215.75, to Columbia at $160 and to Pakistan at $441 while its price in Europe was from $31 to $32.

(9) The American company "Roche" was supplying the tranquilizer Librium to Merck Pakistan at the rate of $245 while its actual price was $21.50 to $25 in the European market.

(10) Merck supplied Antihistamine to its branch in Pakistan at the rate of $1600 per Kg. while its equivalent in Europe was $20.50 per Kg.

(11) These foreign drug companies did not make any innovations in India or other developing countries but introduced only their brand names. The Hathi Committee on Drugs and Pharmaceuticals[50] has clearly pointed out the abuse of their brand names by these foreign

companies. Besides financial exploitation of developing countries, these foreign drug companies experimented with a number of drugs on the citizens of developing countries, which had not yet been introduced in the developed countries.

Foreign controlled companies remit huge profits, dividends, technical collaboration fees and know-how charges to their foreign parent companies which increases the burden of remittance of foreign exchange on India. As per the report of the Estimates Committee of the Parliament, fully owned Indian subsidiaries of foreign companies remitted a sum of Rs. 2114 million by way of dividends, profits and technical fees from 1968 to 1971 out of which remittance towards dividends was Rs. 1051.4 million.[51] Remittances towards profits and technical collaboration fees during the same period amounted to Rs. 388 million and Rs. 516.1 million respectively.[52] The following instances would make it clear how foreign controlled companies make exorbitant profits in India, accumulate capital and subsequently remit to foreign countries:

(a) Grindlay's Bank made an investment of Rs. 1 million but it accumulated total capital and reserves worth 70.4 million pounds (Rs. 1250 million app.).[53] The bank remitted Rs. 42.1 million on account of head office expenses and Rs. 58.8 million by way of dividends during the years 1966 - 1971.[54]

(b) The Colgate company had an original paid up capital of Rs. 150,000 but its annual turnover as on Dec. 31, 1973, was Rs. 170050902 (Rs. 170 million app.).[55]

(c) Hindustan Lever had the initial investment of Rs. 20 million but its built-up capital amounted to Rs. 170 million in 1974.[56]

(d) Pfizer with a capital of Rs. 2.658 million made a net profit of Rs. 16.6 million in 1975.[57]

(e) "Cadbury Fry Private Ltd.", which is a wholly owned Indian subsidiary of the British company "Cadbury Scooper Overseas Ltd." (London), had a share capital of Rs. 12961000 in 1972 while the company remitted Rs. 32404500 in 1975 and Rs. 35623300 in 1976 as dividends which represents about 250 percent of the original share capital.[58]

(f) The Coca-Cola Company originally invested $87.5 thousand in India while it remitted $20 million in profits during the period of 16 years of its operation.[59]

From the above facts, it is also clear that foreign companies do not contribute to the economic and industrial development of India but they go there to exploit cheap labour and available raw materials and earning exorbitant profits by exploiting local consumers.

It may be argued that there is a danger inherent in a majority foreign equity that the employees of such companies may become loyal only to the foreign controlled companies in which they are employed and not to the country of their residence. In this regard, it would be worth quoting the statement of Mr. W. J. Kenyon Jones, Chairman of the British branch of the well known multinational - Ronson:

> The manager of a company controlled by the United States should set aside nationalist attitudes and understand that in the final analysis his loyalty should be to the share holders of the mother-company and that he must protect their interests, even if in doing so he seems apparently to come into conflict with the national interests of the country in which he is operating.[60]

The Honourable Herb Gray, while examining the issue of foreign direct investment in Canada, has clearly pointed out that direct investment by foreign-controlled companies often tends to reflect laws, economic and industrial objectives of foreign governments and economies.[61] High magnitude of foreign investment and control by foreign companies can also bring foreign cultural values into the country which may or may not be desirable.[62] Thus, foreign companies' control (majority foreign equity participation), opens the doors for the entry of foreign laws into the host country, and influences the national economic structure and industrial priorities.[63]

Moreover, it should be borne in mind that generally, the advantages received from the domestically controlled enterprises are far greater than foreign controlled enterprises. In this regard, it was observed by Herb Gray " that foreign-owned companies did not provide their host countries with benefits equal to those provided by indigenous companies."[64]

Majority foreign equity has a number of advantages too. If the control of the industrial venture remains in foreign investor's hands without much interference by the host government or local investors, more and more foreign investors are willing to make investment and transfer technology into the host-country which gears up the process of industrialization of the country, elevates the level of technological development and research in the country, generates employment for local people and increases exports. But as far as India is concerned, none of these advantages accrued to the country. On the contrary, foreign companies played an important role in exploitation of the country and making it technologically handicapped and dependent on foreign

countries. A commentator has commented that multinaltionals in India have neither generated much employment nor helped to accelerate industrial activities; "rather their existence in the country has put a brake in the process of growth in a number of spheres".[65] What to speak of the industrialization of the country, many of the foreign companies are engaged in buying articles manufactured by the Indian firms and selling them in the local markets after stamping the goods with their foreign brand names.[66] Foreign companies have also not contributed much to the exports of the country. This becomes clear by looking at examples of some individual companies. In 1975, Metal Box had a total turnover of Rs. 540 million while it exported goods worth Rs. 14 thousand only.[67] Hindustan Lever had a turnover of Rs. 22.7 million in the same year while its exports amounted to Rs. 0.592 million. Similarly, Pfizer's total sales in India in 1975 was Rs. 280.2 million while its exports accounted for Rs. 6.2 million only.[68]

From the above, one would be inclined to conclude that India should not adopt a favourable attitude towards majority foreign equity participation. An important question arises as to whether India would be able to import sophisticated and advanced technology not available in the country without allowing foreign investors to hold majority equity in Indian enterprises. One may argue that majority foreign equity participation is not necessary for importing technology. The days of monopoly of a particular company on scientific technology in a particular field have gone. Now-a-days there is tough competition even in high technology oriented industries[69] and hence the bargaining power of the host countries is not as weak as it used to be. Moreover, the existing markets of large companies, especially multinationals, are

mature.[70] Their potential market lies in developing countries of the third world.[71] These companies are also in need of raw materials.[72] So, if they have to expand their business, there is no choice for them except to go for joint ventures with local equity participaton. Local laws of many third world countries limit foreign partners in the joint venture to minority equity participation.[73] For instance, Nigeria does not allow foreigners in the joint venture unless the equity participation of Nigerian citizens or associations is not less than 60 percent in case of the industries specified in schedule 2 (57 items) of the Nigerian Enterprises Promotion Decree No. 3 of 1977, and not less than 50 percent in case of the industries specified in schedule 3 (39 items) of the decree.[74] When many small countries of the third world can insist on majority local equity participation in the joint ventures, there is no reason why India, which is comparatively developed and rich in natural resources, cannot bargain for majority local equity participation. In this regard, the National Committee (India) on Science and Technology in its report, has said:

> Foreign equity participation is not essential for procurement of technology. Equity participation brings dependence and has the possibility of influencing management policy directly or indirectly. Foreign equity participation should not be permitted unless some exceptional circumstances arise when it is seen that no other source exists for the technology or comparable technology and that the only mode left for acquiring such technology is through foreign collaboration.[75]

3. Preferred Industries for Foreign Investment

India looks upon foreign investment as a vehicle for the transfer of technology.[76] Foreign investment is allowed where it would lead to a transfer of technology needed by the country and in export oriented ventures.[77] Foreign technology is required in a variety of industrial

machinery, sophisticated electronic equipments and components, certain automobile ancillaries, a variety of chemicals, fertilizers based on natural gas, certain drugs and pharmaceuticals, man-made fibre, glass and glass products, engineering plastics and resins, pesticides, petro-chemicals etc.

Export oriented units also get a preferential treatment in approval of technical collaboration as well as in the matter of foreign equity limits. Export-oriented unit means those enterprises which export a minimum of 60% of their total production. In the case of 100% export-oriented units, import of capital goods, raw materials, etc. will be exempt from the import duty and the finished products will also be exempt from excise and other central levies.[78] Under a new scheme introduced by the Government of India, recently, 100% export-oriented units can be set up anywhere in India.[79]

4. Industries in Free Trade Zones[80]

The Government of India has established two free trade zones in India - The Kandla Free Trade Zone (KAFTZ) in Gujrat and the Santa Cruz Electronics Export Processing Zone (SEEPZ) in Bombay. Both these zones are meant for wholly export oriented units. While Bombay Free Trade Zone (SEEPZ) is reserved exclusively for export oriented electronics units, Kandla Free Trade Zone (KAFTZ) is meant for multi-product industries i.e., any type of industrial units can be established there. Industries established in these free trade zones get a number of tax and other benefits. They are allowed complete tax exemption in respect of profits and gains derived from their operation in the zones for a period of 5 years in lieu of certain concessions like investment allowance, partial tax holiday, etc.[81] These units can sell 25% of their production in the domestic market as an additional incentive to increase

production and income.[82] The Government of India has recently approved the establishment of four more free trade zones at Madras, Falta, Cochin and Noida. These free trade zones would also provide the same facilities and incentives that are available presently in the existing free trade zones.

5. Investment from Oil Exporting Developing (OED) Countries

Foreign investment not accompanied by foreign technology is not allowed in India but the government has relaxed the policy for investors from Oil Exporting Developing (OED) countries as these countries do not possess any technology that is not available in India.

In the eighties, the Government of India realized that entrepreneurs from OED countries are in a position to make financial investment but they are not in a position to offer any advanced technology. Therefore, in order to encourage investments from these countries, the government decided to allow foreign investment from the enterpreneurs of these countries, even if it is not accompanied with technology. Accordingly, on October 28, 1980, the Government of India issued a Press Note[83] entitled 'Promotion of Investment from OED Countries'. The Note states:

(a) Investment from oil exporting developing countries may be permitted in new companies even if it is in the nature of portfolio investment.

(b) Such investment should not exceed 40% in the equity.

(c) The new companies should be export oriented or should undertake manufacturing activities covered under Appendix I of the Industrial Licensing Policy of 1973.

(d) Investment on the aforesaid pattern may be allowed in hotels.

(e) Investment may also be allowed in new hospital project and such hospitals should have adequate provision for outdoor and emergency medical service to the general public and also for a minimum percentage of occupancy by the Indian public.

(f) Loans should also be allowed to be raised abroad for such joint-ventures provided the terms are reasonable.[84]

6. Investment by Non-residents of Indian Origin

A non-resident of Indian origin means an Indian citizen who has made his permanent home outside India or has proceeded abroad for employment, profession or business. The term also includes Indian citizens living abroad permanently and acquired foreign citizenship, descendents of an Indian who has earlier migrated from undivided India and foreign born wife of such a person.

Investment by non-residents of Indian origin can be divided into 4 classes:

(a) Investment in Indian Banks[85]

(b) Investment in Government Securities, Units, etc.[86]

(c) Investment in Industry[87]

(d) Investment in Immovable Property[88]

(a) Investment in Indian Banks

Non-residents of Indian origin are permitted to open accounts in Indian banks duly authorized for foreign exchange business. There are two types of accounts for non-residents:

(i) Ordinary Non-resident Account

(ii) Non-resident External Account

(i) Ordinary Non-resident Account

This account is maintained in Indian Rupees. Funds are remitted from abroad through banking channels. Account holder is free to withdraw money for local disbursement, investment, payment of Indian taxes, paying insurance premiums etc. All other withdrawals require the Reserve Bank of India's approval. In this account neither the funds accumulated are repatriable nor the interest earned is exempt from income tax.

(ii) Non-resident External Account

External account can be opened in any Indian bank dealing in

foreign exchange. This account can be maintained in Indian Rupees, or in pounds sterling or in U.S. dollars but the money should be remitted from the country of residence of non-resident or any country except U.S.S.R., Poland, East Germany, Czechoslovakia and Romania. Funds held in the account (including interest) are freely repatriable. Withdrawals from the account are also freely allowed for local disbursement, purchase of Government Securities, National Plans, National Saving Certificates and Units issued by the Unit Trust of India. The income arising from above investments can be credited to the Non-resident External Account.

Companies, partnership firms, trusts, societies and other corporate bodies owned by non-residents of Indian origin to the extent of at least 60% are also allowed to open a Non-resident External Account.

(b) Investment in Government Securities, Units, etc.

Non-residents of Indian origin can invest in Government Securities National Plans, National Savings Certificates and Units of the Unit Trust of India. Interest/dividend on these investments and maturity/sale proceeds can be freely repatriated or transferred to Non-resident External Accounts.

(c) Investment in Industry

This is an important category of investment by non-residents of Indian origin and the Government of India has provided a number of facilities and concessions to such investors. Investment in industry can be divided into two categories: -

(i) Without Right of Repatriation.

(ii) With right of Repatriation.

(i) Without Right of Repatriation

Investment in Shares: - Non-residents of Indian origin as well as the companies, partnership firms, trusts, societies and other

corporate bodies owned by non-resident Indians to the extent of 60% or more can invest in:

> New issues of public or private companies engaged in any business activity (except real estate business) up to 100% of the issued capital without any obligation to associate resident Indian participation in equity capital at any time;
>
> Shares of existing companies through stock exchange, subject to specified conditions;
>
> Deposit with firms and companies;
>
> Both convertible and non-convertible debentures through stock exchange in India or out of new issues of Indian companies.[89]

Investment in Electronic Industry:- The Government of India has introduced a new scheme for promoting electronic industries in India. Under this scheme non-residents of Indian origin who want to return to India for permanent settlement and are keen to set up specified electronic industries in the country or participate in the expansion, diversification or modernization of existing industrial units, are provided the following facilitites, subject to the condition that they have at least 20% share in the equity capital of the company:

> (1) They can import machinery without any value limit under the open general license.
>
> (2) They can import raw-materials, components etc. for meeting the first years requirement of the unit under open general license, except a few items for which the prior clearance of the department of electronics would be necessary.[90]

This scheme is applicable to the following industries:

> Electronic components (other than LSI, VLSI); instruments; tape recorders; two-in-one; Hi-Fi equipment; electronic teaching aids; industrial and process control systems; major sub-system of radar; navigational aids and communication equipment; electro-medical equipment.[91]

(ii) With Right of Repatriation

Investment in Shares of Existing Companies: - Non-residents of Indian origin or other corporate bodies owned by non-residents of Indian origin to the extent of at least 60% can invest in shares quoted on stock exchanges in India with full right of repatriation of investment and dividend, provided that the investment in shares does not exceed 5% of the existing shares in the existing company, shares are purchased through stock exchange and the shares so purchased are retained by them for at least one year from the date of registration.

Investment in Non-convertible Debentures: - Non- residents of Indian origin are permitted to invest in non-convertible debentures through stock exchange with full right to repatriate. They can also invest in issues of non-convertible debentures directly.

Investment in Convertible Debentures: - Non-residents of Indian origin are also allowed to purchase convertible debentures through stock exchange with repatriation right subject to the condition that the total value of debentures does not exceed 1% of the total paid up value of convertible debentures in each series issued by the company.

Investment in Deposits with Public Companies: - Non-residents of Indian origin are allowed to make investments in 3 years maturity term deposits with public limited companies with right to repatriate the investment along with the earning thereon.

Fresh Investment in Companies Under 40% Scheme: -Non-residents of Indian origin as well as foreign companies or other corporate

bodies in which non-residents of Indian origin have a minimum of 60% share, in the total capital, are allowed to invest in the new issues of new or existing companies (other than FERA companies) engaged in industrial or manufacturing activities, hospital project or hotels of 3, 4 or 5 star category, up to 40% of the total capital issued, with full benefits of repatriation of capital invested and income earned thereon. Such investment is allowed only if the money is remitted from abroad or invested from a Non-resident External Account in India. Investment in companies other than through the issue of prospectus, is restricted to Rs. 4 million.

Investment in Priority and Export Oriented Industry under 74% Scheme: - Non-residents of Indian origin, companies and other corporate bodies in which non residents of Indian origin have 60% or more share, can invest up to 74% with full right of repatriation of capital and income arising from such investment, in any of the priority industries mentioned in Appendix II.

Under this scheme, investment can be done in other industries also provided the investor exports 60% of the total output (75% in case of industries reserved for small scale sector). Capital equipment can be imported by the investor provided the cost of capital equipment does not exceed the amount of foreign exchange brought into the country. Non-residents are also permitted to invest in a hospital project or hotel project of 3, 4 or 5 star category under this scheme.

This scheme applies to new investments as well as expansion or diversification of existing industrial undertakings.

Investment in Free Trade Zones: - The Government of India has set up two free trade zones in India - the Kandla Free Trade Zone

(KAFTZ) in Gujrat and the Santa Cruz Electronics Export Processing Zone (SEEPZ) in Bombay. Special treatment is accorded to industries set up in these free trade zones. Kandla Free Trade Zone is a multi-product free trade zone while Bombay Free-Trade Zone is reserved exclusively for export oriented electronic units. Non-residents of Indian origin have golden opportunities for investment in these two free trade zones. The industrial units set up in these two free trade zones are now required to export at least 75% of their production[92] (against 100% earlier). Units with 100% foreign equity can be set up in these zones[93]

The government offers a number of facilities for industrial units set up in these zones like a complete tax holiday for 5 years, excise and sales tax relief, duty free import of items etc. Original investment as well as the profits are repatriable without any limit.

Investment in 100% Export Oriented Units: - 100% export oriented units in a variety of industries can be set up anywhere in the country with the same facilities as are available in the free trade zones except that the 5 years tax holiday and permission to sell in the domestic market are not available to them.[94] Non-resident investors of Indian origin can retain 100% foreign equity ownership in these industrial units.

(d) Investment in Immovable Property

Non-residents of Indian nationality are allowed to purchase immovable property for residential purposes (land or constructed house) in India without any permission of the Reserve Bank of India. Foreign citizens of Indian origin are not allowed to acquire any immovable

property without prior permission of the Reserve Bank of India. Usually they are permitted to purchase only one house for residential purposes. Reserve Bank of India may consider requests for acquiring second residential unit (house or flat) on merits provided that funds for purchasing the property are remitted in advance.

(e) Special Facilities Available to Non-residents of Indian Origin

The Government of India has offered a number of facilities to non residents of Indian origin[95] to set up a new industrial undertaking in India or participating in expansion or diversification of an existing industrial undertaking in India. These facilities may briefly be summarized as follows:

(i) They are permitted to import new or second hand capital goods without any financial limit. They may also be permitted to import banned type of capital goods provided the machinery in question has either been used by the investor for at least one year prior to his return to India or the cif of such machinery does not exceed 10% of the cif value of the total machinery allowed to import.

(ii) They are permitted to import new or second hand professional equipment provided that import of new equipment is limited to Rs. 100 thousand cif.

(iii) They are allowed to import generating sets of 500 KVA or upwards.

(iv) They are permitted to import office equipment and furniture used by them for using in their industry in India provided that the value does not exceed Rs. 100 thousand.

(v) Import of computer system is allowed provided that the investor has been using the same for at least one year before returning to

India, or the computer is a built-in-part of the equipment allowed to import.

(vi) Prototypes can be imported.

(vii) Import of cement is allowed for construction of factory building.

(viii) They are allowed to import raw materials, components and spare parts up to three years, subject to a maximum of Rs. 500 thousand per year.

(ix) Non-residents of Indian origin returning home for permanent settlement are also allowed to import agricultural machinery.

(f) Tax Concessions to Non-resident Investors of Indian Origin

Following are the important tax concessions available to non-residents of Indian origin[96] in respect to their investment:

(i) Dividend income arising from units purchased out of funds remitted from abroad or from Non-resident External Account is exempt from income-tax.

(ii) Deposits in Non-resident External Account is exempt from wealth-tax.

(iii) Interest income from balance in Non-resident External Account is exempt from income tax.

(iv) Moneys and value of assets brought into India by non-residents of Indian origin at the time of returning for permanent settlement in India are not subjected to wealth-tax for a period of 7 years. Assets subsequently purchased out of money brought from abroad are also exempt from wealth-tax.

(v) No income tax is charged on remittances out of foreign income.

(vi) Investment in new equity issues of companies in the priority sector, certain type of saving certificates is exempt from

wealth-tax. Investment in saving certificates is also exempt from income-tax and gift-tax.

(vii) Gifts to the relatives of non-residents of Indian origin are exempt from gift-tax provided that the gifts have been made out of Non-resident External Account maintained in an Indian bank.

C. STATISTICAL ASPECT OF FOREIGN INVESTMENT IN INDIA

In the past 36 years about 9000 foreign collaborations[97] have been approved in India. The United Kingdom received the largest number of foreign collaboration approvals while the United States occupied second highest position. The number of foreign collaboration approvals and total foreign investment increased significantly between 1970 and 1982. In 1982, 590 foreign collaborations were approved as against 183 foreign collaborations in 1970.[98] The total foreign investment in India amounted to Rs. 24.52 million and Rs. 628.01 million in the years 1970 and 1982 respectively.[99] The number of foreign collaboration approvals and total foreign investment in India in the years 1970 and 1982 have been shown countrywise in the following table:

Table I.

Foreign Collaborations and
Investment in India
Approvals

Country	Collaborations 1970 (nos.)	Collaborations 1982	Investment 1970(Rs.mn)	Investment 1982
USA	33	110	4.86	50.33
FRG	36	110	1.33	35.35
U.K.	39	106	0.27	16.54
Japan	15	51	7.44	251.12
Switzerland	13	40	1.13	11.81
Italy	8	37	-	39.89
France	7	28	0.15	25.80
Sweden	3	16	-	15.31
Netherlands	3	14	3.20	-
Belgium	1	4	0.12	0.12
Denmark	1	4	-	0.60
NRI's	-	11	-	111.41
Others	24	59	5.9	69.73
Total	183	590	24.52	628.01

Source: Indian Investment Centre, New Delhi, Changing India, Table I.

During 1983, 724 applications for foreign collaborations were received by the SIA out of which 158 applications were referred to the Administrative Ministries for decision.[100] During the same year, 601 old and new foreign collaboration applications were disposed of by the SIA out of which 417 applications were approved and 150 applications were

rejected.[101] An analysis of above figures reveals that in 1983, 70% of cases were approved, 25% of cases were rejected and 5% of cases were otherwise disposed of. The main reasons for rejections[102] were availability of indigenous technology, shortage of raw materials, contrary to the country's industrial policy, existence of adequate capacity, high terms by foreign technology supplier, sufficient justifications not furnished. A majority of the cases were rejected on the ground of raw material constraints. The principal areas of foreign collaboration approvals[103] during 1983 were electrical equipment, industrial machinery, chemicals, ceramics, industrial instruments, machine tools and metallurgical industries.

In 1983, Japan obtained foreign collaboration approvals for the maximum amount (Rs. 160.77 million[104]). The other important countries having received the approvals for sufficiently high amounts are the U.S.A. (Rs. 138.921 million[105]), the U.K. (Rs. 98.018 million[106]) and the Federal Republic of Germany (Rs. 48.423 millions[107]). The quantum of foreign investment approvals during 1983 has been shown countrywise in the following table:

Table II.

Quantum of Foreign Investment
Approvals during 1983

Name of Country	Amount of Investment [RS. in Laks]
1. Australia	10.00
2. Belgium	3.25
3. Canada	35.60
4. Cayman Island, British West Indies	240.00
5. Denmark	11.15
6. France	79.50
7. Finland	10.00
8. FGR	484.23
9. Greece	11.76
10. Hong Kong	7.20
11. Italy	115.00
12. Japan	1,607.70
13. Malaysia	90.00
14. Netherlands	268.60
15. Sweden	80.00
16. Switzerland	112.85
17. U.K.	980.18
18. U.S.A.	1,389.21
19. Non-Resident Indians	651.07
TOTAL	6,187.30

1 Lakh = 0.1 million

Source: Department of Industrial Development, Government of India Ministry of Industry, new Delhi, Report 1983-84, at 19.

According to Indian Investment Centre, between 1978-79 and 1981 - 1982, the total remittances to foreign investors towards profits and dividends rose from Rs. 660.08 million to Rs. 766.01 million.[108] During the same period, remittance towards technical knowhow fees went up from Rs. 36.3 million to Rs. 75.1 million. Remittances in connection with

royalties also rose during this period from Rs. 37.5 million to Rs.73.6 million.[109] Remittances for design and drawings/fees/miscellaneous purposes amounted to Rs. 12.4 million in the financial year 1981-82.[110]

Investment by non-residents of Indian origin in Indian banks constitutes another important area of foreign investment in India. Non-residents' outstanding balance in Non-resident External Accounts increased from 13.3 billions in March, 1982 to Rs. 17.8 billions in March, 1983.[111] Outstanding balance in Non-resident External Accounts in Indian rupees, U.S. dollars and pound sterling on March, 1982 and March 1983 has been shown in the following table:

Table III

Non-resident Capital Inflow

	Outstanding balance (Rs.bn.)	
	1982 March	1983 March
Non-resident external account (Rs.)	11.9	15.3
Foreign currency (non-resident) account (US$)	1.0	1.5
Foreign currency (non-resident) account (Stg.)	0.4	1.0
Total	13.3	17.8

Source: Indian Investing Centre, Chaning India, Table K.

Footnotes - Chapter II

[1] Publication Division, Ministry of Information and Broadcasting Broadcasting, Government of India. India 1984, at 191.

[2] Tidings International Business Directory (1983), at 1.

[3] Department of Economics and Statistics, Tata Services Ltd., Statistical Outline of India (1984), at 14.

[4] Indian Investment Centre, New Delhi, Investing in India (Dec.1983), 1983), at 75.

[5] Id., at 30.

[6] K.V. Iyer and L.R. Kumar, Foreign Collaboration in Industry (1984), Vol. I, at EFP 2.

[7] Supra, note 4, at 10.

[8] Id., at 15, 21.

[9] The Companies Act, 1956 (1 of 1956), S. 591.

[10] Supra, note 6, at EFP 3.

[11] Id., at EFP 4.

[12] Id.

[13] Id.

[14] Id.

[15] Id., at EFP 5.

[16] Id.

[17] Id., at EFP 5-6.

[18] Id., at EFP 7.

[19] Id.

[20] Id.

[21] Id., at EFP 9.

[22] O.M. No. ID & FC-5 (26)/68-II dated 25.1. 1969 regarding foreign collaboration policies and Procedures-Guidelines.

[23] Foreign Exchange Regulation Act, 1947 (1 of 1947),S-18A.

[24] Reserve Bank of India, Foreign Collaboration in Indian Industry: Second Survey Report (1974), at 9.

[25] Id.

[26] Id., at 16.

[27] Id., at 25.

[28] Ministry of Industry, Government of India, Report of the Industrial Licensing Policy Inquiry Committee (1969), at 137.

[29] Government of India, Ministry of Finance, Department of Economic Affairs, Guidelines for Administering Section 29 of Foreign Exchange Regulation Act, 1973, Dt. Dec. 20, 1973.; K.V. Iyer and L.R. Kumar, Foreign Collaboration in Industry (1984), Vol. II, at ECR 21 to ECR 27.

[30] Profulla Roychoudhary, The Transnationals (1981), at 190.

[31] Id.

[32] Government of India, Ministry of Finance, Department of Economic Affairs, Clarification and Amplification of Guidelines issued for Administering Section 29 of FERA, 1973., dated April 16, 1976; Supra, note 29, at ECR 28-ECR-30.

[33] Supra, note 6, at EFP 11.

[34] Press Note No. 9 (10)/78-FC-II, dated December 28, 1978 issued by Government of India, Ministry of Industry, Department of Industrial Development, New Delhi.

[35] Press Note No. 9 (19)/80-FC (I), dated May 25, 1981, issued by Government of India, Ministry of Industry, Department of Industrial Development, New Delhi.

[36] Supra, note 6, at SOT 8-9.; K.V. Iyer, Guide to Industrial Approvals (1983), at 142.

[37] Id, at EFP 12.

[38] Id.

[39] Id., at EFP 12-22.

[40] Id., at EFP 12.

[41] Indian Investment Centre, New Delhi, Foreign Investment in India (May 1985), at 21.

[42] Id., at 13.

[43] Supra, note 29; Supra note 32.

[44] Government of India, Ministry of Commerce (Department of Commerce) Resolution No. 8 (15)/LP/78 Dt. 31.12.1980.

[45] Supra, note 41, at 9.

[46] Id., at 10.

[47] Supra, note 30 at 8.

[48] Id.

[49] Id., at 8-11.

[50] Ministry of Petroleum and Chemcials, Government of India, Report of the Committee on Drugs and Pharmaceutical Industry (1975), at 104-106.

[51] Supra, note 30, at 6.

[52] Id.

[53] Id., at 4.

[54] Id., at 6.

[55] Id., at 4.

[56] Id.

[57] Id., at 5.

[58] Id., at 12.

[59] Id., at 169.

[60] Id., at 8.

[61] Government of Canada, Foreign Direct Investment in Canada, (1972), at 42-43.

[62] Id.

[63] Id., at 42-43, 252-253.

[64]Id., at 76.

[65] Supra, note 30, at 5.

[66] Id., Rajya Sabha Debates, Vol. LXXXV, No. 26, Aug 30, 1973, s. 233.

[67] Supra, note 30, at 6.

68 Id.

69 A.R. Janger, Organization of International Joint Ventures: A Research Report from the Conference Board (1980), at 2.

70 Id., atl, 3.

71 Id., at 3.

72 Id., at 2.

73 Id., at 3.

74 Niki Tobi, "Legal Aspects of Foreign Investment in Nigeria" in (1978) 18 Indian Journal of International Law., 17, at 33.

75 Supra, note 30, at 7.

76 Supra, note 4, at 29.

77 Id., at 30.

78 Supra, note 41, at 12.

79 Id.

80 Supra note 4, at 49-53; Supra note 41, at 12-13.

81 Supra, note 41, at 13.

82 Id.

83 Press Note issued by the Ministry of Finance(Department of Economic Affairs), Government of India on October 28, 1980.

84 Supra, note 4, at 207.

85 Indian Investment Centre, New Delhi, Investment by Non-residents of Indian Origin: Facilities and Incentives (July 1984), at 1-3.

86 Id., at 3.

87 Id., at 3-13; Supra, note 4, at 40-46.

88 Id., at 13.

89 Id., at 3.

90 Id., at 12.

91 Id.

92 Id.

93 Id.

94 Id., at 13.

95 Id., at 9-11; Supra, note 4, 43-45.

96 Id., at 14-16.

97 Supra., note 41, at 4.

98 Indian Investment Centre, New Delhi, Changing India, Table 1.

99 Id.

100 Department of Industrial Development, Government of India Ministry of Industry, New Delhi, Report 1983-84, at 18.

101 Id.

102 Id.

103 Id.

104 Id., at 19.

105 Id.

106 Id.

107 Id.

108 Supra, note 98, Table I.

109 Id.

110 Id.

111 Id., Table K.

CHAPTER III

LEGAL ASPECTS OF FOREIGN INVESTMENT

All investment, whether Indian or foreign, is governed by several Acts and Resolutions. The principal enactments are, A. The Companies Act 1950,[1] B. The Industries (Development and Regulation) Act, 1951,[2] C. The Industrial Policy Resolution,1956,[3] D. The Foreign Exchange Regulation Act, 1973,[4] E. The Monopolies and Restrictive Trade Practices Act, 1969,[5] F. The Income-tax Act, 1961,[6] G. The Companies (profits) Surtax Act, 1964.[7] These are briefly outlined below:

A. THE COMPANIES ACT, 1956

The Companies Act, 1956, governs the business organizations in India. A foreign corporation, which wants to invest in India, has two options under this Act: (1) it can open a branch (place of business) under Section 591 of the Act, or (2) it can establish an Indian Company in accordance with the relevant provisions of the Act. If it chooses the latter course, it can establish either a fully owned subsidiary (subject to the prior approval of the Government of India) or a joint-venture with Indian partners. Once established, it will be generally treated on par with any other enterprise owned by Indians. The Act does not distinguish between foreign controlled and Indian controlled companies.

1. Branches of Foreign Companies

Sections 591 to 608 of the Companies Act, 1956 govern the companies incorporated outside India. Sections 591 to 602 concern the branches

of foreign companies operating in India. Any foreign company can set up a branch (i.e., place of business, in the words of Companies Act) without any formal permission from the Government of India. The Companies Act comes into picture only after it has established such a branch.

Section 592 of the Companies Act requires that within 30 days of the establishment of a place of business, the concerned foreign company should file with the Registrar the following documents for registration:

(1) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting the company;

(2) a full address of the registered or principal office of the company;

(3) a list of the directors and secretary of the company;

(4) the name and address or the names and addresses of some one or more persons resident in India, authorized to accept on behalf of the company service of process and any notices or other documents required to be served on the company; and

(5) the full address of the office of the company in India which is to be deemed its principal place of business in India.

Under Section 594, every foreign company should make out a balance sheet and profit and loss account in accordance with the provisions of the Act and deliver three copies to the Registrar. Section 595 prescribes certain formalities with regards to prospectus inviting subscription in India, disclosure of the name of the country of incorporation and all places of carrying on business in India.

Section 597 of the Act provides that foreign companies have to file

various documents under the Act with the Registrar having jurisdiction over New Delhi as well as with the Registrar of the State (Province) in which their principal office of business is situated. If a foreign company ceases to have a place of business in India, notice must forthwith be given to the Registrar at New Delhi. As from the date such notice is given, the obligation to file any document ceases, provided it has no other place of business in India.

Section 598 of the Act provides that if any foreign company fails to comply with any provisions laid down in part XI of the Act, the company and every officer or agent of the company who is in default, shall be punishable with a fine which may extend to Rs. 1000/- and in the case of a continuing offence, with an additional fine which may extend to Rs. 100/- for every day during which the default continues.

Section 599 of the Act provides that failure to carry out the prescribed procedures for filing documents, etc. laid down in the part XI of the Act will not prevent the foreign company from being sued on a contract, but the foreign company itself will be denied the right to institute any legal proceeding in respect to such contract until those provisions are complied with.

Section 600 of the Act provides that sections 125 to 145 thereof regarding registration of charges, section 118 regarding copies and inspection of debenture trust deeds, and section 209 regarding books of account shall apply, mutatis mutandis, to foreign companies.

Sections 603 to 608 of the Act deal with the procedure for the issue of prospectus by foreign companies.

It may be noted that neither the Company Law Board nor any other authority has any control over branches of the foreign companies.

The provisions of the Companies Act serve only as "visiting cards" of these corporations i.e., they are there only to speak what these companies are, where they have come from and a few details about their transactions.[8] Even if the Registrar discovers something wrong from the documents filed with him, he does not have any power to take action. Probably it is for this reason that branches of foreign companies have proliferated in India. In 1972, 591 branches of foreign companies were operating in India which included some of the leading industrial establishments like I.B.M.[9]

2. Incorporation of Indian Company

(a) Types of Companies

Indian Company Law has classified the companies into two groups; namely, (i) private company and (ii) public company. As per section 3 (1)(iii) of the Companies Act, 1956, a "private company" is a company whose articles of association (a) restricts the right to transfer its shares, (b) limits the number of its members to fifty, and (c) prohibits any invitation to the public to subscribe for any shares or debentures. Section 3(1)(iv) of the Act provides that a company which is not a private company is called a "public company". Both private and public companies may be a limited company or unlimited company. Further, a limited company may be limited by shares or guarantee of individual members of the company.

A company in which the liability of its members is limited to the shares held by them is called "a company limited by shares".[10] "A company limited by guarantee" is a company in which the members of the company undertake to contribute an amount specified in its memorandum, to the company in the event of its being wound up.[11] If there is no

limit to the liability of the individual members of the company, it is termed as "an unlimited company".[12] Thus according to the above classification, all companies formed under the Act may be grouped into the following 6 categories:

(1) Private Companies Limited by Shares,

(2) Public Companies Limited by Shares,

(3) Private Companies Limited by Guarantee,

(4) Public Companies Limited by Guarantee,

(5) Private Unlimited Companies and

(6) Public Unlimited Companies.

(b) Procedure for Incorporation

Any seven or more persons in case of a public company and any two or more persons in case of a private company, may form an incorporated company with or without limited liability by subscribing their names to the memorandum of association and completing necessary formalities for registration.[13] The steps to be taken for the formation of a company may be briefly outlined as:

(i) Preparation of the Memorandum of Association;

(ii) Preparation of the Articles of Association;

(iii) Registration of the Company.

(i) Preparation of Memorandum of Association

Memdorandum of Association is the company's charter which discloses the objects and the power of the company within itself and with regard to the outside world during the course of conducting business. The Memorandum of Association should contain the following things:[14]

(a) The name of the company with "Limited" as the last word in the case of a public limited company and "Private Limited" in the case of a private company;

(b) The main objects together with incidental or ancillary objects necessary for achieving main objects, and other objects of the company which are to be carried out after incorporation;

(c) The name of the State where the registered office of the company is to be situated;

(d) A statement regarding the liability of each of the members by shares or guarantee. In case of a company limited by the guarantee the amount of guarantee by each member is to be stated;

(e) The amount of the share capital with which the company is to be registered.

(ii) Preparation of Articles of Association

Articles of Association[15] signed by the subscribers of the memorandum prescribes internal regulations of the company for carrying on the business. However, Articles of Association is not mendatory in the case of a public company limited by shares. Appointment of directors, their powers and duties, division of the capital into shares, modes of transfer of shares, share certificates, borrowing powers of the Board of Directors, division of the profits and losses, etc. are the matters, which are dealt within the Articles of Association. Articles of Association is usually a much longer document than the Memorandum of Association but the Articles of Association is subordinate to and controlled by, the Memorandum of Association, which is the dominant instrument and contains the general constitution of the company. The Memorandum of Association is fundamental and can be altered only under certain circumstances provided by the Act, but the Articles of Association contain only internal regulations and the members of the company may alter it as

and when they think fit.

(iii) Registration of the Company

Section 33 of the Act provides for the registration of the companies. The section requires (a) memorandum of association, (b) articles of association, if any, and (c) the agreement, if any, which the company proposes to enter into with any individual, firm or corporation, to be appointed as its managing agent or with any firm or corporation to be appointed as its secretaries and treasurers, to be presented for registration, to the Registrar of the state in whcih the registered office of the company is to be situated. In addition to these, a declaration by an advocate of a High Court or the Supreme Court or a chartered accountant regarding compliance of all the requirements of the Act is to be filed with the Registrar.[16] After all the relevant documents have been filed with the Registrar, he examines the documents and registers them, if he is satisfied that all the requirements of the Act have been complied with.[17] Thereafter, the Registrar issues a Certificate of Incorporation mentioning the date of incorporation and certifying under his hand that the company is incorporated.[18]

B. THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

The Industries (Development and Regulation) Act, 1951 is the basic legislation which regulates industrialization and flow of investment in desired industries according to national planned targets. As mentioned earlier in Chapter II, under the Act, an industrial licence is required for establishing new industrial undertakings and expansion of existing undertakings for manufacturing articles specified in the 1st schedule of the Act (Appendix VI). License is necessary for all enterprises, be they foreign or Indian. In granting a license under the

Act, the following principal criteria are considerd:

(1) The objectives of the Industrial Policy Resolution, 1956 and Industrial Licensing Policy.

(2) Specific priorities under the Five Year Plan.

(3) Techno-economic considerations relevant to a particular industry.

(4) Techno-economic features of the project proposal (aspects such as the foreign exchange component of the project, availability of raw materials, the utilization of by-products, the project location, collaboration with foreign entrepreneurs etc.).

A licence under the Act is not necessary in the following cases:

(a) If the investment in fixed assets (land, building and machinery) does not exceed Rs. 50 million, subject to the conditions mentioned in Appendix VII;

(b) If the industrial unit does not propose to manufacture any of the articles mentioned in the 1st schedule of the Act;

(c) If the undertaking is a small scale unit [A list of industries reserved for small scale sector has been given in Appendix VIII] i.e., if the total investment in plant and machinery does not exceed Rs. 3.5 million (earlier Rs. 2 million) provided it does not manufacture items specified in the IV and V schedules of the Act, i.e., if the industry is not governed by special regulations (Appendix IX);

(d) If the industrial undertaking is an ancillary unit with investment in plant and machinery not exceeding Rs. 4.5 million (earlier Rs. 2.5 million), provided that it is not engaged in the manufacture of items specified in the IV and V schedules of the

Act, i.e., industries governed by special regulation (Appendix IX); and

(e) If the industrial activity is not carried on in a factory as defined in the Act.

In 1983, 2755 applications[19] for industrial license were received by the SIA. During the same year 1948 applications were disposed of out of which 985 applications were accepted, 923 applications were rejected, and 40 applications were otherwise disposed of.[20] An analysis of above figures shows that 51% of applications were approved and 25% of applications were rejected. The principal grounds for rejections were existence of adequate capacity, shortage or non-availability of raw materials, proposed location not in conformity with the government's policy, proposal not in accordance with the government's licensing policy.[21]

C. THE INDUSTRIAL POLICY RESOLUTION, 1956

The fundamentals incorporated in the Industrial Policy Resolution, 1956, have regulated the process of industrialization in India for the last thirty years. The Resolution envisages the mixed nature of the Indian economy. It classifies all industries into three categories. Under the first category, the government has reserved certain industries for public sector. This includes public utilities, arms and ammunition and other defence equipment, atomic energy, coal, mineral, oils, electricity generation and distribution, iron and steel, aircraft, broadcasting and telecommunciation, air and rail transportation (See Appendix X). Another category comprises industries which fall under common sector, i.e., where private investment is allowed, but the State

retains the prerogative to make investment. Industries in this sector include aluminium, fertilizer, machine tools, ferrous and non-ferrous metals, certain type of drugs, dye-stuffs, plastics, road and sea transport etc. (Appendix XI). All industries not falling under the above two categories are open to the private sector but the State can also establish any industrial venture in this category.

In July 1980, the Government of India issued an Industrial Policy Statement[22] which reasserted the industrial policy of 1956 and outlined a few new objectives, namely, the need to maximize productivity, to strengthen small-scale industries and to promote export and import substitution. This has been discussed in detail in Chapter II.

D. THE FOREIGN EXCHANGE REGULATION ACT, 1973

Foreign investment in India was made at different times under different conditions and the Government of India wanted to bring it all within a single, uniform framework. Under this law, foreign investment falls into different categories, but with the exception of banks, airlines and shipping companies, which are permitted full foreign ownership on a reciprocal basis for Indian companies operating overseas, most others have to dilute their foreign equity holdings to 40 percent, which has already been discussed in detail in chapter II.

The Companies Act, 1956, under which all companies are incorporated and the Industries (Development and Regulation) Act, 1951 do not distinguish between foreign-controlled and Indian-controlled companies. For this purpose one has to turn to the Foreing Exchange Regulation Act [FERA], 1973. The Foreign Exchange Regulation Act is the only major regulatory Act having a special bearing on the operation of foreign

controlled enterprises. But even this Act, as originally enacted in 1947[23] contained very few provisions by way of regulation of foreign controlled enterprises. The only important provisions thereunder were sections 5 and 18. Under section 5, a foreign collaborator had to get the permission of the Reserve Bank of India, for the remittance of dividends and under section 18, a company controlled directly or indirectly, by non-residents could not borrow money without the prior approval of the Reserve Bank of India. This Act was repealed and a new Act with the same title was enacted in 1973. This new Act, namely, the Foreign Exchange Regulation Act, 1973, contains significant provisions regarding the regulation of foreign controlled business operation in India.

The FERA, 1947, referred to "companies controlled directly or indirectly by non-residents." But the Act itself did not contain any criterion as to how to determine direct or indirect control. This created a great deal of confusion. In order to avoid this confusion, the FERA, 1973 introduces a mathematical criterion. It treats companies in which the non-resident interest is more than forty percent as foreign controlled.

As pointed out above, the Registrar does not have any power under the Companies Act, 1956 to take action against foreign companies even if he discovers something wrong from the documents filed by the branches of the foreign companies and due to this reason a large number of branches of foreign companies were established in India. The Foreign Exchange Regulation Act (FERA) was enacted in 1973, primarily to control the vast amount of foreign investment already in India.

It was found that many foreign controlled companies buy

indigenously manufactured products and after some packing and bottling, market them with their own trade names. Mr. Babubhai Chinani alleged on the floor of the Upper House (Rajya Sabha) that Singer Sewing Company's products, Binaca's tooth paste, Warner Hindustan's gripe water and CIBA's chewing gum were the examples of indigenously manufactured products being sold under the brand names of foreign companies.[24] Roychoudhary has observed that it was not uncommon to witness that the tooth brushes manufactured by Indian firms were stamped with foreign brand names and sold in the Indian markets as the products of some of the TNC firms.[25]

It was also noted that a large amount of foreign exchange was going out of the country merely for the sake of brand names of certain drugs. The Hathi Committee on Drugs and Pharmaceutical Industries[26] recommended that a National Drug Authority should take over the task of distribution of all essential drugs from the drugs and pharmaceutical industry in India, so as to save the consumer from exploitation. It also recommended the abolition of brand names of selected drugs in order to save foreign exchange going out of the country on account of brand names.

Sections 28 and 29 of the Foreign Exchange Regulation Act, 1973 were enacted with a view to tackle the above problems. According to section 28, no company in which non-resident interest is more than forty percent can accept appointment as agent in India of any person or company without the prior approval of the Reserve Bank of India. The term "agent" includes any person or the company buying goods with a view to selling them before any processing thereof and the term processing is defined as producing, preparing or marketing an article by subjecting any material to manual, mechanical, chemical, electrical or any other

like operation. Any process such as dividing, pressing, packing, labelling, branding or any such treatment as is necessary to render such product marketable to the consumer is specifically excluded from the definition of processing. As a result of these definitions, even principal to principal agreement between a foreign controlled company and an Indian party through which the former buys the latter's goods and sells them under its brand name cannot be entered into without the prior approval of the Reserve Bank of India. Where such agreement has already been entered into, the parties concerned should get the permission of the Reserve Bank of India within six months from the date of the commencement of the Act for continuance thereof.

Under section 28 (1) (e) no foreign company or foreign controlled company can allow its trade mark to be used by any person or company for any direct or indirect consideration. In the case of technical collaborations between foreign companies and Indian companies, the latter many times seek the permission of the former to use their brand names in return for some direct consideration. These practices come directly within the purview of this section. Further, even when foreign companies establish their subsidiaries in India and sell the production thereof under their brand names, the Reserve Bank's permission is required provided there is any direct or indirect consideration, for, in the eye of the law, the subsidiary is an Indian company. Any existing arrangement in this connection at the time of the commencement of the Act requires the approval of the Reserve Bank of India for its continuance.

Under section 29, no foreign company or foreign controlled company can carry on any activity of trading, of a commercial or industrial nature without the permission of the Reserve Bank of India. The existing

arrangements at the time of the commencement of the Act, would be subject to review by the Reserve Bank of India.

E. THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

The Monopolies and Restrictive Trade Practices Act, 1969 controls monopolistic and restrictive trade practices. In respect of concentration of economic power the Act has made provisions for avoiding concentration of economic power (sections 20-23). In respect of undertakings, where the total value of assets (to be calculated along with the value of interconnected undertakings, is not less than Rs. 100 crores (Rs. 1000 million) and in case of a dominant undertaking (an undertaking which controls at least 25% of total production of India or possesses at least 25% licensed capacity of total installed capacity in India), where total value of assets is not less than Rs.1 crore (Rs. 10 million), expansion has been prohibited without the sanction of the Central Government (sections 20,21). Similarly, no undertaking whose total assets including the assets of interconnected undertakings is not less than Rs. 100 crores (Rs. 1000 million) or dominant undertaking having assets of not less than Rs. 1 crore (Rs. 10 million) can establish a new undertaking without prior permission of the Central Government (sections 20,22). Section 23 prohibits merger or amalgamation of any undertaking of above category with any other undertaking without approval of the Central Government. It also prohibits amalgamation or merger of two or more undertakings which would result in the formation of an undertaking of the above category. However, under section 22A(1), the Central Government has power to relax all or any of the provisions of sections 21 and 22 regarding expansion or establishment of new

undertakings in respect of an industry or service specified in the notification, undertakings established in a free trade zone and undertakings meant exclusively for producing export items.

Under section 5 of the Act, the Government of India is to set up a Commission known as Monopolies and Restrictive Trade Practices Commission consisting of a Chairman and not less than two and not more than eight members to be appointed by the Central Government. The Central Government in consultation with the Commission, is to appoint a Director General of Investigation and Registration and as many Additional, Joint, Deputy or Assistant Director General of Investigation and Registration, as necessary, for the purpose of making investigations and maintaining a register of agreements required to be registered under this Act (section 8).

The Commission has very wide powers and duties. The Commission is to inquire into any restrictive trade practices or monopolistic trade practices upon a reference made to it or upon its own knowledge or information (section 10). The Commission has for the purpose of an inquiry the same powers as vested in a civil court under the Civil Procedure Code of India (section 12).

If the Commission comes to the conclusion that any particular practice is prejudicial to the public interest, it has the power to direct that the practice shall not be repeated or shall be discontinued or that the agreement relating thereto shall be void in respect of such restrictive trade practice or shall stand modified in such manner as may be specified in the order (section 37).

The Commission has also a special power of recommending division of

any trade of an undertaking by the sale of any part of the assets or interconnected undertakings (section 27).

The Commission has also the power of excluding goods of any class to be exempted from the operation of sections 39 and 40 which are sections preventing agreements controlling resale prices (section 41).

With regard to monopolistic trade practices, the Commission may make reports to the Central Government on its findings and the Central Government may pass orders regulating the production, supply, distribution or control of any goods, prohibiting the undertaking from resorting to any act or practice or from pursuing any such commercial policy, fixing standards for the goods used or produced by the undertaking, declaring unlawful any agreement or part thereof or requiring the party to any such agreement to determine the agreement within such time as may be specified (section 31).

The Act also provides for prohibition of measures for maintaining resale prices (sections 39,40). The Act further provides for powers of the Registrar and the Central Government to obtain information regarding the activities of the Undertaking (sections 42,43). Merger or amalgamation, establishment of a new undertaking or expansion of the existing one, acquisition or transfer of shares in contravention with the Act and violation of the orders of the Commission or the Central Government, furnishing false information are criminal offences under the Act. The maximum punishment is a fine up to Rs. 1 lakh (Rs. 100 thousand) and imprisonment for a term extending to five years depending upon the category of the offence (sections 45-52).

It is important to note that monopoly is not a criminal offence

under the Indian law, only violation of the government's order in respect of monopolistic practices is a criminal offence which is punishable with imprisonment for a minimum term of six months and maximum term of two years in case of subsequent offence.

F. INCOME TAX ACT, 1961

Income tax, in India, is a yearly tax chargeable on the yearly income of every person or corporation liable to tax under the provisions of the Income-tax, Act 1961. The rates of tax are prescribed by the Parliament every year by separate legislation called the Finance Act. The tax year is called the assessment year which corresponds to the government's financial year and runs from April 1, to March, 31. Tax in a particular assessment year is assessed on the taxpayer's total income in the previous year which is normally the period of twelve months preceding the 1st April of the assessment year, or any other accounting year of twelve months of the taxpayer ending within that period of twelve months.

1. Corporate Taxation

In India corporate bodies are known as companies. A company is a distinct taxable entity for income tax purposes. Under the Income-tax Act, a company is treated as an Indian Company if it is formed and registered under the Indian Companies Act, 1956, or a foreign company if it is a corporate body incorporated under the law of any other country. Companies are taxed generally at flat rates which vary according to nature of the income, residential status and the class of company. The rate of tax applicable on a company depends upon whether it is a

domestic company or a foreign company, whether it is a closely-held company or a widely held company; and whether it is an industrial company or a trading company. Widely held domestic companies pay income tax at lower rates than the rates applicable to closely-held domestic companies. Among the closely held domestic companies, industrial companies pay tax at lower rates as compared to the rates applicable on non-industrial or trading companies.

(a) Rates of Income Tax on Companies

As pointed out above, the rates of income-tax varies every year. The Government of India has considerably reduced the taxation rates for the assessment year 1986-87. The tax-rates for the year 1985-86 and 1986-87 are given in Tables IV and V in the following pages. In addition to that companies are required to pay a 5% surcharge on income tax payable. No surcharge is payable on dividend income of a foreign company. Further, the surcharge has been abolished with effect from April 1, 1988.

(b) Deductions

Under sections 30-36 of the Income-tax Act, 1961, several deductions are permissible when computing a company's tax liability. The principal deductions are: rent, taxes, repairs and insurance for buildings used for business; repairs and insurance of machinery, plant and furniture; depreciation allowance for buildings, machinery, plant or furniture; investment allowance for plant and machinery etc; development rebate, rehabilitation allowance; expenditure on scientific research; expenditure on acquisition of patent rights or copy rights, expenditure on knowhow; export market development allowance; rural development

Table IV

CORPORATE TAX RATES

(1985-86)

I. In the Case of a Domestic Company

(1) where the company is a company in which the public are substantially interested	55 percent of the total income
(2) where the company is not a company in which the public are substantially interested	
(i) in the case of an industrial company	60 percent of the total income
(ii) in any other case	65 percent of the total income

II. In the Case of a Company other than a Domestic Company

(i) on so much of the total income as consists of:

(a) Royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April 1976 or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with theGovernment or the Indianconcern after the 29th day of February, 1964 but before the 1st day of April 1976,

and where such agreement has, in either case, been approved by the Central Government — 50 percent:

(ii) on the balance, if any, of the total income — 70 percent:

Surcharge on Corporate Tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph shall be increased by a surcharge calculated at the rate of five per cent, of such income-tax.

Table V

CORPORATE TAX RATES

(1986-87)

I. In the Case of a Domestic Company

(1) where the company is a company in which the public are substantially interested	55 percent of the total income
(2) where the company is not a company in which the public are substantially interested	
(i) in the case of a trading company or an investment company	60 percent of the total income
(ii) in any other case	55 percent of the total income

II. In the Case of a Company other than a Domestic Company

(i) on so much of the total income as consists of: (a) Royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April 1976 or (b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with theGovernment or the Indianconcern after the 29th day of February, 1964 but before the 1st day of April 1976,	
and where such agreement has, in either case, been approved by the Central Government	50 percent.
(ii) on the balance, if any, of the total income	65 percent.

Surcharge on Corporate Tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph shall be increased by a surcharge calculated at the rate of five per cent, of such income-tax.

allowance; payment made to associations and institutions for carrying out rural development programmes, conservation of natural resources programmes and preliminary expenditure for setting up a new industrial undertaking or expansion of an existing industrial undertaking.

(c) Tax Incentives

Most countries give a number of tax incentives to attract capital.[27] The incentives are given to attract foreign capital or prevent domestic capital from going abroad.[28] In order to encourage fresh investments in industry, technological development, small scale industries, and export-oriented units, the Government of India also offers a variety of tax incentives to industrial units. Some of the major incentives[29] are briefly discussed below:

(i) Tax Holidays

New industrial undertakings set up within a period of 9 years (the period has been extended recently by 5 years) following March, 1981 are exempt from income tax on 20 percent of their gross profits (25% in the case of companies) for a period of 8 years.[30] In case of a co-operative society this benefit will be available for a period of 10 years.[31]

(ii) Tax Concessions in Backward Areas

In order to promote industrial development in the backward areas of the country, new industrial undertakings or hotels set up in specified backward areas are allowed a deduction of 20 percent on their profits and gains while computing their income for a period of 10 years from the establishment of the industrial undertaking or hotel.[32]

(iii) Tax Concession for Small Scale Industrial Undertakings Set Up in Rural Areas

The Government of India has accorded a special treatment to small scale industries set up in rural areas.[33] Accordingly, a tax payer is entitled to a deduction of 20 percent of the profits earned by him from small scale industrial undertakings set up after June 30, 1977 in any rural area. This tax concession is available only for a period of 10 years commencing from the year of starting production.

(iv) Tax Holiday for New Industrial Undertakings in Free Trade Zones

With a view to provide encouragement for establishing export-oriented ventures in the free trade zones, the government has allowed complete tax exemption in respect of profits derived from industrial undertakings established in free trade zones for a period of 5 years.[34] This tax holiday is in lieu of all other tax concessions which are available to all industrial ventures in India.

(v) Investment Allowance

An investment allowance at the rate of 25 percent is admissible for new machinery or plant installed for producing a range of products or for generation and distribution of electricity or any other form of power. If the new machinery or plant is installed after May 31, 1983, for controlling pollution or protecting environment in any industrial unit, investment allowance on such machinery is admissible at the rate of 35 percent. If a plant or machinery installed after June 30, 1977 is based on technical knowhow developed by a laboratory of the government or public sector company or a university or an institution, investment allowance on such plant and machinery is allowed at the rate of 35 percent.

(vi) Deduction for Export Turnover

An Indian company is allowed a deduction from its income at the rate of 1 percent of the total export made during the previous year.[36] An additional deduction at the rate of 5 percent is allowed on increased export during the previous year over the immediately preceding year.[37]

(vii) Tax-exemption for Foreign Technicians

A non-resident foreign technician whose contract is approved by the Government of India is exempt from income-tax on up to Rs. 4000/per month for a period of two years following his arrival in India.[38] The remuneration received by a foreign expert as an employee of a foreign enterprise for services rendered by him during his stay in India is also exempt from income tax provided his stay in India does not exceed 90 days in any one year.[39]

2. Foreign Investment and Income-Tax

Taxation is an important factor affecting foreign investment in a country. Taxation policy is a crucial source of benefits from foreign investment for the host country. Therefore, the government should design its policy in such a way that it can obtain maximum advantages from the foreign investments.

Because of high population, foreign exchange problem occasioned by increasing imports and technological gap existing in a number of fields, India needs introduction of sophisticated technology and the stepping up of its production through labour oriented and export oriented industries. In addition to this, India's proximity to the Mediterranean and the Far East together with the technological advancements India has made

in recent years, makes it an attractive country for foreign investors as it is very convenient for them to step up their production in India and export to the vast developing markets in all Asian countries.[40] India has an abundance of skilled and semi-skilled labour and its engineering facilities has proved a boon to the foreign companies operating in India.[41] Therefore, taxation of income of these foreign investors is an important problem and requires the serious attention of the government.

(a) Taxation of World-wide Earnings

Corporate, as well as individual income arising within the boundaries of a country, is universally taxable in all the countries but some countries exempt foreign earnings of domestic corporations from taxation. Countries taxing income originating from local sources only are called "territorial" taxing countries while the countries taxing world-wide earnings are termed as "world-wide"taxing countries. Example of "territorial" taxing country is France which taxes the income from local sources only.[42] The United States and the Federal Republic of Germany are examples of "world-wide" taxing countries which tax income from foreign sources also, but the Federal Republic of Germany taxes the world-wide income of the companies only if their seat or place of management is in Germany, while in the U.S.A., place of incorporation is the taxing criterion.[43] India taxes on the "world-wide" income principle. The corporations are seriously affected by different approaches adopted by governments in regard to foreign source earnings.[44] "World-wide and "territorial" tax approaches affect the competitive power of the companies in foreign markets.[45] Under the world-wide taxing principle, subsidiaries and branches of foreign companies with high tax rates in

their home country cannot compete with the branches or subsidiaries of the companies whose home country either exempts earnings from foreign sources from tax or imposes low tax rates, if they are operating in the same host country.[46] For example, if there is a U.S. subsidiary competing with a French subsidiary in a host country with a low corporate tax rate (e.g. Hong Kong-17%[47]), the French subsidiary will be more competitive because the United States taxes its corporations on their "world-wide" income, while France applies the "territorial" principle.[48] The U.S. company has to pay high U.S. as well as low Hong Kong tax compared to the French subsidiary which pays only the low Hong Kong tax. It may be advantageous for India also, to shift from "world-wide" taxation principle to "territorial" principle in respect to Indian companies. In the recent years, Indian entrepreneurs have established a number of (238 by the end of March, 1983[49]) joint ventures in foreign countries. The government should not tax the income of Indian companies from foreign sources or its operations abroad. This will increase the competitiveness of Indian firms in the foreign markets. It would also increase foreign exchange flow to India from Indian companies operating in low tax rate countries as these companies would remit more money in terms of profits and dividends, if their income is exempt from tax in India.

(b) <u>High Tax Rates</u>

Tables IV and V show that the corporate income tax rates are significantly high in India. Income tax rates are usually lower in the developing countries than in the developed countries[50], India is an exception to this. A comparison of corporate tax rates of India and other countries shows that the tax rate for domestic companies is the third

highest in India (50% to 60% for the year 1986-1987[51]), with the only higher rates in Iran (63%) and Pakistan (60%).[52] High personal and corporate tax rates in India are due to a narrow tax base[53] for instance no income tax is levied on agricultural income despite the fact that the agricultural income constitutes a significant portion (Rs. 44,6730 million in 1980-1981[54]) of the total national income (Rs. 113,8820 million in 1980-1981 and Rs. 169,0000 million in 1983-84[55])

It is evident from Tables IV and V that corporation tax rates in India range from 50% to 70% and 50% to 65% for the tax years 1985-86 and 1986-87 respectively. Because of high tax rates, foreign companies as well as domestic companies do not show their correct income and resort to means of tax evasion which adversely affects the government's tax revenue. IBM is an important example for manipulating its account books for the purpose of concealing its actual earnings.[56] According to Safarian's study regarding corporate taxation in North America:

> When Canada had a corporate tax rate of 47%, relative to the American tax rate of 52%, U.S. corporations found it advantageous not to charge the Canadian subsidiary for management, licensing fees and technology, since this would have the effect of reducing the Canadian subsidiaries' tax burden and increasing the American parent's liability in the high tax jurisdiction.[57]

The above analysis is equally applicable to India. If the Indian corporate tax rates are lowered, foreign companies from high tax rate countries would show more profits in their Indian subsidiaries which would increase tax revenue of the Indian Government from foreign investment and also reduce the burden of remittance of foreign exchange for royalties and technical collaboration fees. Besides tax revenue and saving of foreign exchange, an important advantage of lowering tax rates is that the Indian companies will retain more profits on record which

they will be able to invest in developing activities (industrialization) of the country and thus, this money would be more productive than the hidden money (black income of the corporations retained by way of tax evasion) and money transferred to foreign parent companies by way of high royalties and technical collaboraions. In respect of high income tax rates and productivity of the capital, a leading commentator has concluded:

> The Government of India should consider reducing the corporate tax to a reasonable level (perhaps 50%) and reducing the impact of the surtax. This would improve corporate savings, investment and growth. Experience has shown that the corporate sector's marginal savings rate is much higher than that of the government. As such, money left in the hands of companies has greater potential for investment than does money controlled by the government.[58]

If the income tax rates are lowered in India, it would attract foreign capital from the countries taxing the corporate income on "territorial" principle. Investors from these countries would be prepared to invest money and transfer advanced technology even with minority equity participation due to tax advantages.

An important advantage of lowering tax rates, is that investors from the countries taxing on "territorial" principle would establish more export oriented ventures in India because the cost of production in India would come much lower than in their own home countries due to low cost Indian labour, which would increase their competitiveness in the international market and this would boost Indian exports.

Some countries have different tax rates for distributed and undistributed profits, for instance, in the Federal Republic of Germany, corporations are taxed at the rate of 51% on that part of the year's profit that is not distributed, while the share holders are taxed on the

distributed part at the rate of 15 percent.[59] France provides partial relief at the shareholder level, thus, the corporation pays tax at the rate of 50 percent, on all its profits, distributed or undistributed, and the individual shareholder is given credit in his taxable income on the dividends received by him.[60] This situation benefits the French corporations having subsidiaries in Germany, where taxation of only undistributed profits in Germany gives relief to the German subsidiary and the low tax rate applicable on the dividend income, benefits the French parent corporation. India should also use this "split-rate" method for taxation of distributed and undistributed profits but in a different way and only for foreign controlled companies. In the case of subsidiaries of foreign companies and companies where foreign interest is in the majority, the government should prescribe a higher income tax rate for distributed profit and a lower rate for undistributed profit. This would help in dilution of foreign equity in Indian companies and these foreign-controlled companies would declare less dividends and retain more profits locally, which, on the one hand, would reduce the burden of remittance of foreign exchange and provide more capital for reinvestment in Indian industries with majority local equity participation, on the other hand.

G. THE COMPANIES (PROFITS) SURTAX ACT, 1964

Under the provisions of the Companies Surtax Act, 1964, a domestic company is also liable to a special tax called surtax on chargeable profits in excess of statutory deductions (i.e., 15 percent of the capital of the company or Rs. 200,000, whichever is greater). The chargeable profits means a company's total income reduced by income tax

payable by the company. The rate of surtax levied is 25 percent on the amount of excess up to 5 percent of amount of the company's capital and 40 percent on the balance of such excess. The surtax will stand abolished from April 1, 1988.

The income of non-resident companies include mainly dividends on their equity shares, interest on loans, royalties received from government or any Indian concern or technical service fees for technical collaboration in India. Income arising from all these items is exempt from surtax. Hence, the effect of the Companies Surtax Act, 1964 on non-resident company investors, is negligible.

Footnotes Chapter III

1 The Companies Act, 1956 (1 of 1956).

2 The Industries (Development and Regulation) Act, 1951 (65 of 1951).

3 Industrial Policy Resolution, 1956.

4 The Foreign Exchange Regulation Act, 1973 (46 of 1973).

5 The Monopolies and Restrictive Trade Practices Act., 1969 (54 of 1969).

6 The Income-tax Act, 1961 (43 of 1961).

7 The Companies (Profits) Surtax Act, 1964 (7 of 1964).

8 Proceedings of the seminar on Current problems of Corporate Law: Management and practice, (Bombay, 1964), at 164.

9 Statement made in Lok Sabha in reply to an unstarred question No. 1286 November 20, 1973 by the Deputy Minister of Company Affairs, Mr. Bedabrata; A. Jayagovinda, "Regulation of Foreign Enterprises in India" in Indian Journal of International Law (1977) 325 at 330.

10 Supra, note 1, S.12(2)(a).

11 Supra, note 1, S.12(2)(b).

12 Supra, note 1, S.12(2)(c).

13 Supra, note 1, S.12(1).

14 Supra, note 1,S.13.

15 Supra, note 1, S.26.

16 Supra, note 1, S.33(2).

17 Supra, note 1, S.33(3).

18 Supra, note 1, S.34.

19 Department of Industrial Development, Government of India, Ministry of Industry, New Delhi, Report 1983-84, at 17.

20 Id.

21 Id.

22 K.V. Iyer and L.R. Kumar, Foreign Collaboration in Industry (1984), Vol. 1., at EFP 12.

23 The Foreign Exchange Regulation Act, 1947 (7 of 1947).

[24] Rajya Sabha Debates, Vol. LXXXV, No. 26, August 30, 1973, s. 233.

[25] P. Roychoudhary, The Transnationals (1981), at 5.

[26] Ministry of Petroleum and Chemicals, Government of India Report of the Committee on Drugs and Pharmaceutical Industry (1975), at 84, 104 to 106.

[27] Mrs. S.K. Verma, "Taxation of Multinational Corporations" in Indian Journal of International Law (1976), 93 at 99.

[28] Id.

[29] Indian Investment Centre, New Delhi; Taxes and Incentives (1983), at 51 to 77.

[30] Id., at 69.

[31] Id.

[32] Id., at 70.

[33] Id.

[34] Id., at 75.

[35] Id., at 53-56.

[36] Id., at 72-73.

[37] Id.

[38] Id., at 95-96.

[39] Id., at 97.

[40] V. Gaurishankar, "Taxation of Foreign Companies - An Indian Perspective with reference to Code of Conduct for Transnational Corporations" in Indian Journal of International Law (1977) 21, at 22.

[41] Id.

[42] Supra, note 27 at 94.

[43] Id., at 94-95.

[44] Id.

[45] Id., at 97.

[46] Id.

47 Supra, note 40, at 38.

48 Supra, note 27, at 97.

49 Department of Economcis and Statistics, Tata Services Ltd., Statistical Outline of India (1984), at 127.

50 Supra, note 27, at 95.

51 The Finance Act, 1985, First Schedule, Part III, Paragraph E.

52 U.V. Singh, "Taxation Aspects of Foreign Investments in India in Georgia Journal of International and Comparative Law (1981), 133, at 158.

53 Id., at 173.

54 Supra, note 49, at 20.

55 Id., at 17.

56 Supra, note 25, at 5.

57 Charles J. McMillan, "After Gray report: The Tortuous Evolution of Foreign Investment Policy" in McGill Law Journal 1974, Vol. 20., at 236.

58 Supra, note 52, at 158.

59 Supra, note 27, at 98.

60 Id.

CHAPTER IV

FOREIGN INVESTMENT APPROVALS AND APPROVAL PROCEDURE

A. APPROVALS

All foreign investors are required to obtain several official approvals, chiefly:

(1) An industrial license under section 11 of the Industries (Development and Regulation) Act, 1951[1] (unless otherwise exempted), which also includes MRTP clearance;

(2) Endorsement of terms and conditions of foreign investment by Foreign Investment Board;

(3) Consent for the issue of capital stock under section 3 of the Capital Issues (Control) Act, 1947;[2]

(4) An import license for importing capital equipment and machinery under the Imports and Exports Control Act, 1947.[3]

Other approvals, like Reserve Bank of India's foreign exchange permit required for the investment, are granted automatically, once the FIB's approval is obtained.

B. APPROVAL PROCEDURE

The industrial license under section 11 of the Industries (D & R) Act, 1951, which authorizes production capacity of the new enterprise is the primary requirement. An industrial license is necessary, irrespective of the amount of capital outlay, for investment in a new undertaking or expansion of an existing undertaking, in the following cases: (a) foreign-controlled companies having more than 40 % equity;[4] (b) M.R.T.P. companies;[5] (c) undertakings with fixed assets (plant and

machinery) of over Rs. 5 crores (Rs. 50 million);[6] (d) such specified industries as coal, power loom, textiles, milk foods, industrial gases, leather and AAC/ACSR conductors; (e) industries reserved for the small scale sector where the investment in plant and machinery exceeds Rs. 35 lakhs (Rs. 3.5 million); [7] and (f) projects requiring foreign exchange in excess of 15% of annual turnover or Rs. 4 million, whichever is less.[8]

Foreign investors and large industrial houses are normally not allowed to invest in industries which are reserved for public sector or small-scale sector. Expansion of foreign controlled company is normally allowed only if the expansion is necessary to operate the existing undertaking to the minimum economic level at which it can operate efficiently.

All foreign investors must obtain a letter of intent (provisional industrial license) mentioning conditions subject to which the license will be issued before making necessary arrangements for the industrial project. The letter of intent, indicates that the Government of India has approved the venture and authorizes the applicant to arrange for necessary financial and technical collaboration. Under the existing procedure, letters of intent, foreign collaboration approvals and capital goods clearance are to be issued within 60 days of the receipt of application in each case.[9] Large companies which fall under the purview of section 20 of MRTP Act, 1969,[10] also require MRTP clearance which takes 90 days. The letter of intent is valid for one year and the industrial license is issued after the conditions mentioned therein have been met.

Investment applications are examined by several government bodies, particularly by the Foreign Investment Board. The FIB includes officials from the Finance Ministry, Planning Commission of India, Council of Scientific and Industrial Research, Directorate General of Technical Development and many secretaries from other ministries. Proposals involving foreign equity of up to 25% are dealt with by a sub-comittee of the FIB; the board is competent to decide the cases involving 25% to 40% of foreign equity and the proposals with foreign equity above 40% are within the jurisdiction of the Cabinet Committee.

The Government of India has constituted a number of inter-ministerial committees for considering applications for industrial licenses, foreign collaborations, import of capital equipment etc. the principal committees are:

(1) Licensing Committee (LC) to deal with applications for industrial license.

(2) Licensing-cum-MRTP (LC-MRTP) committee to deal with cases involving both license and MRTP clearance.

(3) Foreign Investment Board (FIB) (for dealing with foreign collaboration proposals).

(4) Project Approval Board (PAB) (which deals with composit applications for industrial license, foreign collaboration and import of capital goods).

(5) Capital Goods Committee (CG Committee) (for dealing with applications to import capital goods).

(6) Special Committee of Secretaries on Fertilizer Projects.

(7) Board of Approvals for 100% Export-oriented Undertakings (E.O. Board).

(8) Kandla Free Trade Zone Board (KAFTZ Board).

(9) Santa Cruz Electronics Export Processing Zone Board (SEEPZ Board).[11]

All the above committes are serviced by the Secretariate for Industrial Approvals (SIA) which operates within the Ministry of Industry and Civil Supplies. The structure of the SIA has been shown in the following chart:

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Source: K.V. Iyer, Guide to Industrial Approvals (1983), at 23.

The SIA processes all investment applications. It receives the application forms for industrial licenses and foreign collaboration agreements, channels them correctly, monitors delays and ultimately issues letters of intent and industrial licenses after approval of FIB. It usually takes 3 months to obtain all necessary approvals (if the project is approved by the FIB).

The following main factors are considered for granting approval to a foreign investment project:

(i) The priority of the industry as per the Five Year Plan and conformity with the industrial policy;

(ii) The planned or projected demand for the proposed items of manufacture and the scope for further licensing;

(iii) The net effect on balance of payment;

(iv) Location aspects and extent to which utilization of indigenous knowhow, design and consultancy services as well as research and development activity will be encouraged;

(v) The extent to which dependence on import will be reduced by progressive manufacture of components and raw materials;

(vi) The direct and indirect employment potential;

(vii) The economic viability and the efficiency of production process proposed to be adopted;

(viii) Availability of necessary inputs for the production process;

(ix) The competence of the entrepreneur and the possibility of achieving commercial production in a reasonable period of time.[12]

Once an investor has obtained a license under section 11 of the Industrial (D&R) Act, 1951, he needs consent of the Government of India for the issue of capital stock where the issue exceeds Rs. 2.5 million

or a takeover is involved. Since the issue of capital stock to the Indian public has tax advantages and majority of foreign investors need Indian partners in the venture, many foreign affiliated companies have placed capital issues in India.

Reserve Bank of India's approval is also required for issuing securities to a foreign company so that the investment qualifies for remittance of earnings and repatriation of capital invested. In addition to all above approvals and clearances a new entrepreneur is also required to obtain licenses from State Governments, Municipal Corporations (or Village Panchayats), U.I.T. and City Development Authority for allotment of land, land rentals, water, electric connection and power rights. It is important to note that most imports require license and the Controller of Exports and Imports must approve the issue of import licenses for each piece of imported equipment and spare parts. Import licenses are usually issued to end-users. Import licenses may be issued for most industrial raw materials, capital goods and consumer goods provided they are not available in the country and if available are not of required standard. Exporters receive a favourable treatment in issuance of import licenses due to their key role in earning foreign exchange for the country.

All proposals regarding financial or technical foreign collaboration or foreign investment, should be submitted in the prescribed forms to the Secretariate for Industrial Approvals, Department of Industrial Development, Udyog Bhawan, New Delhi.

The Government of India has introduced a special scheme called "single window clearance" for disposing composite proposals. Under the scheme for "single window clearance", the project approval board

considered cases requiring more than one approval, involving industrial license, foreign collaboration and import of capital goods.[13] 187 composite proposals were received in 1984 as against 128 in 1983.[14] Under the "single window scheme", 213 cases of investment by non-resident Indians have been cleared by the special approval committee since the inception of the scheme in November, 1983.[15]

The Government of India is encouraging non-residents of Indian origin to return home and invest in the country. The government has offered a number of concessions and facilities to those non-residents of Indian origin who want to establish industries in India but the investment approval and industrial licensing procedure is very lenghty and complicated and often approvals are not accorded within the specified time. Swaraj Paul, a leading industrialist of British nationality and of Indian origin, who wants to return to India for establishing a fertilizer project at Calcutta and investing in various other industries, has commented, that "although there was talk about encouraging investment and liberalization, policies, structures and operating procedures discouraged such participation in the most subtle but effective ways."[16] He has further said that "Many Indians in the U.K., North America and the Far East feel that there are limits to the amount of time and effort one can spend on non-resident investment."[17]

Footnotes Chapter IV

1 The Industries (Development and Regulation) Act, 1951 (65 of 1951), S.11.

2 The Capital Issues (Control) Act, 1947 (29 of 1947), S.3

3 Imports and Exports (Control) Act, 1947 (18 of 1947).

4 K.V. Iyer and L.R. Kumar, Foreign Collaboration in Industry(1984), Vol. 1, at AFC 19; press Note No 12 (129)/LP/76 dated 16 November, 1976, issued by Government of India, Ministry of Industry (Department of Industrial Development.

5 Supra, note 4, at AFC 2.

6 Id.,at AFC 11-12; Notification Nos. S.O. 98 (E)/DRA/29B 73/I dated 16-2-1973, issued by Government of India, Ministry of Industry.

7 Id.

8 Id.

9 Indian Investment Centre, New Delhi, Investing in India (Dec. 1983), at 22.

10 The Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), S.20.

11 Supra, note 9, at 23.

12 Id., at 25.

13 India News, 7/85, dated March 5, 1985, at 1.

14 Id.

15 Id.

16 India Abroad, dated Sept. 5, 1986, at 12.

17 Id.

CHAPTER V

INTERNATIONAL JOINT-VENTURES AND INDIA

India visualizes foreign investment as a vehicle for the transfer of technology not available in the country. International joint venture is one of the most common methods of making foreign investment and transferring technology. Therefore, an attempt has been made to study the objectives of international joint-ventures and their role in transferring technology, India's problems and position in this respect.

A joint-venture may be defined as "the commitment, for more than a very short duration, of funds, facilities and services by two or more legally separate interests, to an enterprise for their mutual benefit."[1] Thus, according to this definition, a definite commitment of the risk accompanied with the project, sharing of equity and a long term or continuing duration are three important characteristics of a joint-venture.

Joint-ventures may be classified as national and international. This discussion will remain confined to international joint-ventures. An international joint-venture may be formed by a combination of (i) foreign nationals and local nationals or (ii) foreign nationals and the host government or (iii) nationals of different foreign countries for establishing a venture in a third country.[2] In the widest sense, the international joint-venture "comprises any form of association which implies collaboration for more than a very transitory period."[3] The central concept in the international joint-ventures" is that of partnership."[4] Here, partnership does not mean partnership strictly in the legal sense as defined in the Partnership Act. The degree of

partnership may range from a long-term construction job, in which the industrialized country supplies the machinery, the leading personnel, technical assistance, and, in some cases, long-term loans (often backed by government guarantees), and the recipient country supplies the land, the labour, some of the materials, and the administative conditions for the development of the enterprise, to equity partnerships in the narrower sense.[5] Thus, the international joint-venture includes at least one entity that is a foreigner in the transaction.

A. OBJECTIVES OF INTERNATIONAL JOINT VENTURES

The objectives in establishing an international joint-venture are as diverse as the enterprises involved. The Conference Board, an independent research institution in the U.S.A., Canada and Europe had surveyed and interviewed 168 companies from the United States, the United Kingdom, Germany, Italy, Japan, Canada and Mexico regarding joint-ventures.[6] On the basis of these surveys and interviews the Conference Board concluded six principal objectives in establishing international joint-ventures:

1. Wish to enter attractive new markets for companies in mature markets;[7]
2. Need to deal with rising economic nationalism;[8]
3. Need for new raw materials;[9]
4. A desire to share hightened economic risk in many of their new business ventures;[10]
5. To provide a base for export in the region;[11] and
6. To sell technology.[12]

In addition to these, acquiring means of distribution, entering a new business field, acquiring skilled marketing executives, achieving vertical integration of existing products, expanding existing product lines, learning newly developed market needs, improving the effectiveness of existing marketing efforts, avoiding cyclical or seasonal instability and acquiring consumer franchises are some of the other important objectives in setting up international joint-ventures.

B. IMPORTANCE OF TRANSFER OF TECHNOLOGY

Transfer of technology is one of the most important objectives of international joint-ventures, especially, in developing countries. Transfer of technology means "the introduction into a country of technologies which exist elsewhere but not yet in that country."[14] No country in the world expects to be totally self-sufficient in technology; even the most advanced countries import as well as export it.[15] Technology is an essential input for production.[16] It is bought and sold in the following forms: (a) embodied in physical assets, as for example, plants, machinery and equipment and, sometimes, intermediate products; (b) as services of skilled and often highly specialized manpower; (c) as information whether of a technical or of a commercial nature.[17] By nature, the sale and purchase of technology is a complicated issue. First, it is a difficult task to fix price of technology and second, technological information is the most secret aspect of modern industrial production and failure in maintaining secrecy may frustrate the very purpose of transfer of technology and the imitation produced by others as a result of leakage of confidential technical information destroys the profitable markets.

A joint-venture provides the foreign corporation an excellent opportunity to transfer technology into the host country. The Group of the Eminent Persons has pointed out in their report to the United Nations:

> The developing countries are interested in obtaining wide, rapid and easy access to adequate technology in order to accelerate their rate of economic and social advance. But this interest is not to be interpreted as being narrowly confined to continuing imports of technology from abroad. Equal importance attaches to the creation and strengthening of their own national technological capabilities so that they can continue their future development on a basis of self-reliance while participating, as equal partners with other countries, in the international advance and exchange of technologies.
>
> ... Developing countries in particular should seek not only to acquire the capacity to select the most suitable technology for their purposes but also to develop the capacity to generate their own technology.[18]

Joint-venture often involves the transfer of technology from one of the partners to the joint-venture corporation. Such transfer may include patents, trademarks, copyright or technical knowhow. The most common method of transferring technology to the joint-venture corporation is by virtue of the licensing agreements. In other words the domestic partner agrees to make payment in the form of technical fees, royalties etc. for obtaining foreign technology.

The importance of transfer of technology is obvious from the continuing efforts of UNCTAD to achieve its International Code of Conduct on Transfer of Technology.[19] It is well recognized that the transfer of technology is an essential element for the growth and prosperity of underdeveloped or developing nations.[20] A commentator has observed that "transfer of technology from developed to less developed countries (L.D.Cs.) represents one of the major hopes for improving the economic position of L.D.Cs."[21] It is important to note that underdeveloped countries have experienced in the past that the

existing mode and practices for the transfer of technology from developed countries have not served their purpose. On the contrary, this mechanism of transfer of technology has negated "their efforts to acquire their primary objective of independent economic development."[22] The developing countries have complained that the terms and conditions of transfer of technology from the advanced countries have been disadvantageous to them on accocunt of their weak bargaining power in comparison to rich entrepreneurs from developed countries.[23] Zuijdwijk has noted that the technology suppliers from the advanced nations often incorporate restrictive clauses in the supply agreements that are detrimental to the recipient from the developing nations.[24] It is for these reasons, that the United Nations Conference on Trade and Development (popularly known as UNCTAD) undertook the task of drafting an international code of conduct with a view to provide a remedy to all these problems concerning the transfer of technology. The basic objective of the Code is stated in the UNCTAD Secretariat's Report as:

> The task is then to restructure existing relationships between suppliers and recipients of technology so as to facilitate the third world's access to the accumulated promise of mankind's scientific and technological achievements.[25]

The scope of applicability would be universal, that is, it would be applied to all parties and all countries, regardless of their group, economic and political systems and development levels.[26] Chapter 1 the code defines the term "transfer of technoloy" as "the transfer of systematic knowledge for the manufacture of a product, for the application of a process or for the rendering of a service and does not extend to the transactions involving the mere sale or mere lease of goods."[27]

The Code shall apply to only those transactions in which the technology supplier and recipient are situated in different countries. A commentator has noted that a supplier of technology may defraud the provisions of the Code by supplying the technology through affiliates or subsidiary companies located in the country of the recipient of technology.[28]

Chapter 4 lists the practices, usually employed in the transfer of technology transactions.[29] This chapter is the most controversial chapter of the Code, even the title of the chapter has not been agreed upon by all nations. The text of universally acceptable practices for inclusion in the report of the conference dated June 5, 1985 has been given in Appendix A.1.[30] Text of practices under consideration has been given in Appendix D.[31] The practices prohibited by the Code include exclusive dealing, price-fixing, tying arrangements, grant-back provisions and export restrictions.[32]

Chapter 5 deals with responsibilities and obligations of contracting parties[33] and has been formulated with a view to complete the transaction in a clean manner and says that the Code would be of limited effect, as it is not legally enforceable. In this regard, "it is unfortunate that the Group B (western) countries has taken the position that the Code should be no more than a set of guidelines."[34]

A commentator has suggested that the compliance of the Code would depend on the national law of the parties involved in the transaction but the Code will ultimately influence the national legislation and judicial verdicts:

> How far the provisions of the Code of Conduct apply should be left to the proper law of contract or the law governing the transfer as defined by the applicable private international law rule. There can be no doubt that a wide acceptance of a properly drafted Code of Conduct will gradually induce national legislatures and courts to adopt its recommendations and incorporate them into their legal systems.[35]

Whether the Code is adopted by various national legislatures or remains merely a set of guidelines (as perceived by developed countries), the objectives of the Code are to be appreciated. It is expected that the objectives and restrictive practices contained in the Code would benefit the supplier as well as the recipient of technology. Such a Code "should provide a framework for unification and standardization of rules of transfer of technology."[36]

C. INDIAN EXPERIENCE ON TRANSFER OF TECHNOLOGY

One major problem in the transfer of technology is that the suppliers from advanced countries do not supply latest technical know-how and innovations because they fear that the developing countries, where labour is comparatively cheaper, may stand in competition with them and destroy their foreign markets.

The Indian experience says that in the past, foreign companies have not transferred much technology to India, and whatever little technology was imported by them, was either outdated or not suitable to the needs of the country. A number of researches conducted by various institutions and individuals have established the fact that technology transferred by the TNC's in India, extracting a very high price, was actually third-line technology.[37] The technology transferred by these foreign companies has created an additional problem that by adopting such outdated and useless technology the country has become further dependent on the foreign sources for maintenance and modifications.[38] I.B.M., a giant foreign company in the field of electronics and communciation industry, did not manufacture any computer machines in India but merely assembled components and imported second hand machines from its other

branches.[39] According to a contract for maintenance of these machines, the users have to depend entirely on I.B.M. for servicing, spares and replacements.[40]

While recognizing the necessity and importance of importing foreign technology, it is important that it should not be imported blindly. It is not always the case that foreign technology is better than indigenous technology. In India, presently four automobile industries are manufacturing cars and jeeps. Hindustan Motors, Premier Automobile Ltd. and Mahindra and Mahindra Motors are producing automobiles with completely indigenous technology and components. "Maruti Udyog Ltd.", which is a public sector undertaking, has started manufacturing "Maruti" cars in collaboration with "Suzuki" of Japan, which has been a failure in comparison to three indigenously manufactured cars. According to Oriental Insurance Company, out of 625 car accidents in Delhi, 600 involved "Maruti" cars, despite the fact that Maruti constitutes only a little fraction of the total number of cars in Delhi.[41] According to Mr. K. K. Gupta, Regional Manager of Oriental Insurance Company, "buying a Maruti car is inviting an accident."[42]

D. INDIAN JOINT-VENTURES

India-foreign joint-ventures can be divided into three categories, namely:

1. Foreign joint-ventures in India;
2. Indian joint-ventures abroad and;
3. Third country joint-ventures.

1. Foreign Joint-ventures in India

According to Business India[43] by the end of 1984, the total number

of foreign collaborations approved in India since 1957 was 8,641. Since 1980, the number of foreign collaboration approvals rose substantially and is expected to rise further in the years to come as a result of government's recent policy liberalizations. The United Kingdom received the largest number of foreign collaboration approvals (1,886).[44] Other countries having received a significant number of foreign collaboration approvals in India are the U.S.A. (1,691), West Germany (1,556), Japan (750), Switzerland (510), France (424) and Italy (328).[45] Most of these collaborations have taken place in the fields of industrial machinery, electronics, telecommunications, engineering, automobiles and auto ancillaries, machine tools, rubber, petrochemicals, fertilizer, drugs and pharmaceuticals, minerals and chemicals. The number of foreign collaborations approved in India between 1977 - 1983 have been shown countrywise in Appendix XII.[46] A summary of foreign collaboration approvals in India with principal countries from 1957 to 1984 has been given in Appendix XIII.

According to Indian Investment Centre, "During 1982 a record number of 590 foreign collaborations were approved by the Government of India with countries like U.S.A. (110), U.K. (106), FRG (110), Switzerland (40), Japan (51), Italy (37) and France (28)."[47]

2. Indian Joint-venture Abroad

As a result of planned development after independence, India has established a solid industrial base with a large pool of scientific and technological manpower. A significant development in the past few years has been the establishment of Indian joint-ventures in foreign countries. As noted in Statistical Outline of India, 1984, by the end of March 1983, 238 joint-ventures had been established in 27 countries, 141

of which were operating and 87 were under implementation.[48] Seventy - four percent of these joint-ventures were concentrated in 10 countries, namely, Malaysia (28), Singapore (27), Sri Lanka (23), Nigeria (21), Indonesia (15), U.S.A. (14), Thailand (12), Kenya (12), U.K. (12) and U.A.E. (11).[49] These numbers reflect that Indian entrepreneurs are more interested in establishing joint-ventures in South and Southeast Asia, Africa and the Middle East.

Indian joint-ventures abroad have involved financial participation as well as technical knowhow and employment of Indian experts. Most of these joint-ventures have taken place in the fields of textiles, fertilizers and chemicals, agro-industries, light engineering, computer software, pulp and paper, steel, cement and construction projects. Establishment of large projects like steel, cement and machine tool plants is gaining importance and is expected to become the most important kind of Indian investment abroad in the coming years. Besides, India's trained scientific and technical personnel have played an important role in providing consultancy services to foreign countries for power generation and distribution, engineering, fertilizers and chemicals, computer software and air and rail transportation.

3. Third Country Joint-ventures

India-foreign joint-ventures need not necessarily be confined only to Indian territory. As mentioned above, the growth of Indian joint-ventures has been important in the last few years. Most of these ventures are located in Southeast Asia, Africa and the Middle East and have taken place in textiles, pulp and paper, engineering, construction, steel, cement, chemicals and consultant services, but many Indian entrepreneurs still lack necessary financial resources, capital goods

and advanced technology required to effectively penetrate the international markets. Therefore, Indian-foreign join-ventures in third countries open an additional avenue for foreign investment and industrial co-operation, with foreign participation in the equity and technology components of the joint-venture and Indian participation in the labour and consultancy components of the joint-ventures. In the last few years, there have been a number of cases where the foreign, (particularly the U.S.) equipment manufacturers have joined hands with Indian civil engineering contractors for construction projects in the Middle East.

The two main advantages of setting up third country joint-ventures with Indian companies are (a) the possibility of achieving a competitive price by using low cost Indian labour, technical and scientific personnel and certain type of raw materials with foreign expertise, financial resources and technology; and (b) the foreign partner in the venture can be paid in foreign currency outside India and thus avoiding comparatively high Indian taxes and Reserve Bank's interference in repatriation of profits and capital.

Recently, a 24 member high-level delegation led by the Industries Minister of Sweden visited India. The two countries "explored the possibility of increasing trade and co-operation ... and establishing joint projects in third countries."[50]

E. NON-RESIDENTS OF INDIAN ORIGIN AND JOINT VENTURES

Now-a-days, non-residents of Indian origin are showing special interests in establishing joint ventures with Indian entrepreneurs. A number of electronics projects set up by non-residents of Indian origin

in collaboration with the Punjab State Electronics Development and Production Corporation Ltd. (P.S.E.D.P.C.L.) are running successfully. The examples of such projects are, Manufacturing Technologies Ltd., Magnetic Information Technologies Ltd., Milgard India Ltd. and Power Technologies Ltd.[51] Between November, 1983 and December 1984, 213 cases of investment by non-residents of Indian origin were approved which involves a total investment of Rs. 4000 million out of which the share of non-resident Indians was Rs. 810 million.

In the beginning of 1985, non-residents of Indian origin and Punjab State Electronics Development and Production Corporation Ltd. have signed agreements for establishing three high technology projects worth Rs. 800 million.[53] The first project is for manufacturing lethium batteries. Equipment and technology worth Rs. 120 million for this project, will be supplied by a Vancouver based firm, Ballard Technologies Corporation.[54] The second project worth Rs. 80 million, which is being set up by non-residents of Indian origin, based in West Germany, will produce polyester film for use in audio, video and computer casettes.[55] The third project costing Rs. 600 million is being set up by a group of 14 non-resident Indians based in the U.S.A., will manufacture very large scale integrated circuits (V.L.S.I.C.).[56]

Footnotes Chapter V

[1]James W. C. Tomlinson, The Joint Venture Process in International Business: India and Pakistan (1970), at 8.

[2] Id.

[3] W.G. Friedmann and George Kalmanoff,Joint- International Business Ventures (1961), at 6.

[4] Id., at 5.

[5] Id., at 6.

[6]Allen R. Janger, Organization of International Joint Ventures: A Research Report from the Conference Board(1980).

[7] Id., at 1.

[8] Id.

[9] Id., at 2.

[10] Id.

[11] Id.

[12] Id.

[13] John Walmsley, Handbook of International Joint Ventures (1982), at 3-4.

[14] Edward K.Y. Chen, Multinational Corporation, Technology and Employment (1983), at 63.

[15]U.N. Doc. E/5500/Rev. 1 ST/ESA/6(1974), The Impace of Multinational Corporations on Development and on International Relations, at 69.

[16]Id., at 66.

[17]Id.

[18]Id., at 66-67.

[19] Since 1979, the UNCTAD has had six sessions to examine draft proposals for an International Code of Conduct on the Transfer of Technology with a view to achieve unanimity among all the nations. The last (sixth) session was held on June 5, 1985.

[20] H.S. Fairley and P.J. Rowcliffe, "The UNCTAD Code of Conduct for the International Transfer of Technology: Problems and Prospects", (1980), 18 Can. Yearbok of International Law 218.

[21] C.P. Jeffries, "Regulation of Transfer of Technology An Evaluation of the UNCTAD Code of Conduct", (1977), 18 Harvard International L.J. 309.

[22] Supra, note 20, at 219.

[23] D. Thompson, "The UNCTAD Code on Transfer of Technology", (1982), 16 J.World Trade Law 311, at 312; Supra, note 15, at 66.

[24] T.Z.M. Zuijdwijk, " The UNCTAD Code of Conduct on the Transfer of Technology", (1978), 24 McGill L. J. 562, at 563.

[25] U.N. Doc. TD/B/C6/A.C.1/2/Supp 1/Rev. (1975), An International Code of Conduct on Transfer of Technology, Report by the UNCTAD Secretariat, at 3.

[26] U.N. Doc. TD/CODE/TOT/47 (1985), Draft International Code of Conduct on the Transfer of Technology (as of 5 June 1985), at 2.

[27] Id., at 1.

[28] Supra, note 23, at 320-321.

[29] Supra, note 26, at 46-48.

[30] Id., Appendix A, at 2-5.

[31] Id., Appendix D. at 1-3.

[32] Id., at 12-13.

[33] Id., at 12.

[34] Supra, note 24, at 580.

[35] G.A. Zaphriou, "An International Code of Conduct on Transfer of Technology", (1977), 26 International & Comp. L. 0.210, at 218.

[36] Supra, note 21, at 342.

[37] P. Roychoudhary, The Transnationals (1981) at 6.

[38] Id., at 7.

[39] Id., at 5.

[40] Id.

[41] Maruti: Costly Lessons in India Today, August 31, 1985, at 56.

[42] Id.

43 Business India, Feb 24 - March 9, 1986, at 31.

44 Id.

45 Id.

46 Indian Investment Centre, New Delhi, Investing in India (Dec. 1983), at 210; Department of Economics and Statistics, Tata Services Ltd., Statistical Outline of India (1984), at 127.

47 Id., at 30.

48 Department of Economcis and Statistics, Tata Services Ltd., Statistical Outline of India (1984), at 127.

49 Id.

50 National Herald International Weekly Dt. March 15-21,at 6.

51 Indian News, No. 8/85, Dt. March 25, 1985 (High Commission of India, Ottawa), at 7.

52 Indian News, No 7/85, Dt. March 5, 1985 (High Commission of India), at 1-2.

53 Supra, note 51 at 6.

54 Id. at 7.

55 Id.

56 Id.

CHAPTER VI

CONCLUSIONS

Regulation of foreign investment is one of the most controversial issues of the present times in all developed as well as developing nations. It is not an easy task to draw a balance sheet of merits and demerits of any system of regulating foreign investment. Existence of rigid (e.g. Japan and Mexico), restrictive (e.g. India) and liberal (U.S.A., Canada and Netherlands) foreign investment policy throughout the world and pro and anti views on each and every aspect of foreign investment has further complicated the issue. No two economists, jurists, politicians and governments in any country have ever been unanimous on each and every aspect of foreign investment.

Moreover, the same policy cannot remain good for always. National and international demands, nature of industry, technological and production levels, style of living of people and needs of the society goes on changing and accordingly a country's attitude towards the foreign investment varies. For instance, India welcomed foreign investment in the early days of its independence because of a narrow industrial base and poor technological development in the country but as the country made rapid advancement during the second and third Five Year Plans, the government's approach gradually became increasingly selective until recently when the government's attitude towards foreign investment became comparatively liberal in order to bridge the technological gap which has occured due to the government's restrictive foreign investment policy in the past.

India is rich in human and natural resources and has the third largest pool of scientific and technical manpower in the world, but yet it ranks number ten in the world as far as industrialization is concerned. The country, in spite of its huge resources, does not occupy a position on the world's industrial map that a small country like Japan with no natural resources, occupies. This goes to show that the country has not adopted proper economic and industrial policies in the past. However, it does not mean that, since Japan has been the most successful country in the world, India should adopt the economic policy of Japan. A country's industrial and foreign investment policy depends largely on its natural resources, manpower, geographical situation, climatic conditions, historical background, technological and industrial development, and economic and political systems. A country should design its foreign investment and industrial policies, keeping all the above factors in view, in such a way that it can take maximum advantage of its human and natural resources and at the same time step forward towards self-sufficiency as far as possible.

In the last chapters, an attempt has been made to study policy, legal and procedural aspects of foreign investment in India as well as international joint-ventures. In this chapter, it is proposed to make critical analyses of the same and make some recommendations.

From the point of view of convenience, I have divided my discussion into ten parts, namely:

A. LEGISLATION;

B. GENERAL POLICY;

C. MAJORITY EQUITY PARTICIPATION;

D. EFFECT OF SELECTIVE APPROACH TOWARDS FOREIGN COLLABORATION AND TRANSFER OF TECHNOLOGY;

E. JAPANESE INVESTMENT IN INDIA AND ITS IMPLICATIONS;

F. COMPANY LAW;

G. ANTITRUST LAW;

H. INCOME TAX LAW;

I. APPROVAL PROCEDURE;

J. RECOMMENDATIONS.

A. LEGISLATION

There is no formal legislation on foreign investment and collaboration policy in India. The Government of India issues Guidelines, Press Notes and Policy Statements from time to time regarding the country's investment and collaboration policy. The first Statement regarding India's foreign investment policy was issued on April 6, 1949. In May 1961, the Government of India issued a Press Note regarding importation of foreign technology and foreign investment. Thereafter, on January 25, 1969, the Government of India issued guidelines regarding foreign collaboration policies and procedures. The government also published three lists along with the guidelines specifying the industries in which (i) both financial and technical collaboration may be permitted, (ii) only technical collaboration may be permitted, and (iii) neither financial nor technical collaboration would be permitted. On December 20, 1973, the government issued guidelines for administering section-29 of the Foreign Exchange Regulation Act, 1973, and thereafter a clarification and amplification of these guidelines was issued on April 16, 1976. On December 23, 1977, an Industrial Policy Statement regarding continuous flow of technology in

high priority and sophisticated areas was issued by the government. On December 28, 1978, the government released a Press Note along with an illustrative list of industries where no financial or technical collaboration was considered necessary. In July 1980, the government issued a second Industrial Policy Statement regarding importation of technology. On May 25, 1981, the Government of India issued a Press Note regarding delegation of powers to the Administrative Ministries for granting approvals for foreign collaboration cases. On July 3, 1983, the government issued a new Policy Statement known as Technology Policy, 1983. [For details of all these Policy Statements, Press Notes and Guidelines See Chapter II].

From the above, it is clear that the Indian foreign collaboration and investment policy has gone through a number of changes since 1949. It is recommended that, the Government of India should enact legislation incorporating clear and detailed current foreign investment and collaboration policy and approval procedure and specify the industries where technical and/or financial collaboration is permissible.

B. GENERAL POLICY

Although foreign investment does not rank among the top priorities of the present government[1], the government does recognize its importance for the continuous flow of technology into the country. In India, foreign investment has been viewed as a carrier for the transfer of sophisticated technology not available in the country and as such, foreign investment not accompanied with foreign technology, is not allowed. However, investors from Oil Exporting Developing (OED)

countries and non-residents of Indian origin are allowed to invest even if there is no transfer of technology. Although, the transfer of technology may be accompanied by foreign equity, there is a marked preference for the outright purchase of technology[2]. Thus the emphasis of current foreign investment policy is on transfer of technology and not on financial investment. Foreign exchange contribution to the Indian economy is another important consideration in allowing foreign investment and export-oriented or import substitution ventures receive favourable treatment. Foreign equity is generally limited to 40% but a higher percentage of foreign equity may be permitted in certain cases which would be discussed in the next section while dealing with majority foreign equity participation.

C. MAJORITY FOREIGN EQUITY

In India, companies engaged in priority sector production or requiring sophisticated technology in their operations are permitted majority foreign equity participation (up to 74%). The disadvantages of majority foreign equity participation has been discussed in detail in Chapter II. Exploitation of local consumers, dependence on foreign countries for technological needs, inefficiencies in local industry, high burden of remittance of foreign exchange, reflection of foreign laws, industrial priorities and cultural values, foreign control over economy, importation of outdated technology including used machinery and hampering the development of indigenous technology are some of the major adverse effects of majority foreign equity participation. Therefore, it seems reasonable that the Government of India should not allow majority foreign equity even in these industries, unless it is exceptionally

necessary to import a particular technology in the national interest and there is no other source for importing that or equivalent technology. In this respect, the National Committe (India) on Science and Technology, has also recommended that "foreign equity participation is not essential for procurement of technology."[3]

D. EFFECT OF SELECTIVE APPROACH TOWARDS FOREIGN COLLABORATION AND TRANSFER OF TECHNOLOGY.

Between 1951 and 1966 India made rapid advancement in the development of indigenous technology. A number of private companies and government institutions undertook technological and scientific researches. Besides, foreign controlled companies and foreign technical collaborations adversely affected the country's foreign exchange reserves on account of high remittances towards technical collaboration fee and dividends. All this compelled the government to adopt a selective approach towards foreign financial and technical collabortions in the late sixties and seventies. In 1969, the Government of India, on the recommendation of the Mudaliar Committee, published three lists of industries, viz. (i) Industries where technical and financial collaboration, both could be permitted, (ii) industries in which only technical collaboration was permitted and (iii) industries in which neither financial nor technical collaboration was permitted. Thereafter, in 1978, the Government of India published another list of Industries where financial and or technical collaboration was no longer required, in supersession of the above three lists (Appendix IV). As a result of the government's selective approach, continuous flow of technology in these areas stopped for a long time and it created a wide gap

in national and international levels of technology. Therefore, it is desirable that the Government of India open more fields for foreign collaboration in order to bridge the technological gap existing as a result of the government's restrictive approach in the past, of course, limiting the foreign investor to minority equity participation.

Presently, India is lagging in many areas of technology and many Indian products are outdated from the point of view of international standards. For instance, though India is self-sufficient in the automobile industry and three of the four car manufacturers in India are manufacturing cars with completely indigenous technology and components, according to Vivek Bharat Ram, Executive Director of D.C.M.-Toyota, "Virtually no automobile part made in the country is of international quality today."[4] However, the country has now recognized the need of international collaboration in the automobile industry and recently a number of Indian automobile companies, have joined hands with foreign automobile companies. Premier Automobiles Ltd., has entered into an collaboration agreement with Fiat from Europe for the body, and Nissan of Japan for the engine in order to produce the Fiat 118NE.[5] Toyota, Mitushbishi and Honda have also cleared their way of penetrating into Indian markets. DCM has collaborated with Toyota for producing cars and jeeps, Eisher Motors has collaborated with the Mitushbishi Motor Corporation and TELCO has collaborated with Honda to build Honda Accord and Standard Rover.[6] Mahindra and Mahindra is negotiating with Peugot and American Motors and Escorts wants to make a fuel efficient "Citroens" which will give more than 20 km per litre.[7]

Whenever Indian industries have imported foreign technology in the past, they have absorbed and assimilated new technology and adapted and developed it according to Indian needs. As mentioned above, as a result of recent liberalization by Indian Government, many Indian companies have entered into collaboration agreements with Japanese automobile manufacturers. Most of these Indian auto manufacturers plan to use 40 to 45 percent Indian components in the very first year of production and to raise it to 100 percent in the fifth year.[8]

It has been mentioned in Chapter V that the technology suppliers from developed countries often supply outdated technology and many times technology supplied by them has not suited Indian needs. This is clear by the example of Maruti cars manufactured in India with Japanese collaboration.[9] Therefore, it is important that it should be carefully examined at the time of granting approvals for import of technology, that the supplier is not supplying outdated technology, and that the technology being supplied, is suitable to Indian needs.

E. JAPANESE INVESTMENT IN INDIA AND ITS IMPLICATIONS.

The recent trend of foreign investment in India, indicates that there is a marked preference for investment from Japan. As mentioned in Chapter II while dealing with statistical aspects of foreign investment in India, Japan has obtained foreign collaboration approvals for Rs. 160.77 million in the year 1983, which is the highest among all foreign countries. As mentioned above, Indian automobile companies have also entered into collaboration agreements with their Japanese counterparts. It may be argued that this is not a healthy feature. The Japanese have never been interested in transferring their technology to foreign

countries but their object is to find foreign markets for their vehicles and components and making the host country dependent on Japan. The modus operandi of Japanese business companies is, selling original equipment at very low prices, making the foreign consumer dependent for spares and then making heavy profits on spares. Managing Director of Maruti Udyog Ltd. (producer of Maruit-Suzuki cars) has said that "in the Japanese scheme of things profits come from spares and not original equipment supply and spares are priced 20 to 175 percent more than original components."[10] Maruti Udyog and Suzuki of Japan are jointly manufacturing "Maruti" cars in India. The original car costs Rs. 47,500 on road but the price of a new door is Rs. 4,500. A person owning an Indian-made "Ambassador" or "Premier Padmini" car, can buy the plastic case of a tail light for Rs. 10 or 15 while a "Maruti" car owner has to pay Rs. 350 for the same.[11] In an accident of a "Maruti" car, its engine and gearbox were undamaged but still the total price of replacement of the rest of the components was much higher than the price of a new "Maruti".[12] The above facts give a very clear picture of Japanese business policy.

It has been mentioned above that Japanese companies are more interested in selling their components rather than technology transfer. According to the collaboration agreement, Maruti Udyog Ltd. was supposed to achieve 30% indigenization by March 1985,[13] but couldn't do so because of the attitude of Japanese companies. A number of component supplying units have complained that Japanese have rejected their parts on flimsy grounds because they want to keep supplying their components for as long as possible.[14] A component manufacturer complains "the Japanese companies want to take the components to Japan for testing. They don't want

testing to be done in India."[15] A number of ancillary units have also complained that Japanese vehicle manufacturers do not give them proper drawings and the drawings supplied to them are always in Japanese so that they cannot read them.[16] They were of the view that the Japanese did not seem interested in Indian manufacturers being able to understand their drawings.[17]

In India, labour and superior quality metallurgical materials are available at much cheaper rates than in Japan but the Japanese collaboration agreements have been so designed that the cost of Indian made Japanese cars will come one-and-a-half to twice of those produced in Japan.[18] Therefore, exporting Indian-made automobiles to foreign countries will be a dream only. Thus on the one hand there is no hope of earning foreign exchange through the automobile industry and on the other hand the country will have to spend a large amount of foreign exchange for importing equipments and components and this will significantly affect foreign exchange reserves of India.

To conclude, the Japanese strategy is to capture and retain foreign automobile markets and withhold the most valuable parts of the automobile technology. If the penetration of Japanese automobile companies in India is not carefully evaluated and regulated well in time, Indian industries will remain confined to low skilled assembling jobs and manufacturing of simpler parts. Its long term implications would be an increased monopoly of the most complicated and advanced technological innovations and production techniques by the Japanese, leaving the task of assembling and distributing automobile kits manufactured in Japan for Indians. An important implication of overdependence on Japanese car manufacturers for technological and financial needs, would be that the

potential of indigenous automobile companies to design and produce a car of their own will come down and the country will lag behind further in automobile technology. This would lead to a higher degree of monopolization of the Japanese in the world automobile industry and in such case, India would not remain unaffected from its ill consequences.

F. COMPANY LAW

Under Indian law, a foreign investor may either establish its branch in India (limited scope) or may incorporate an Indian company. Sections 591 to 602 of the Companies Act, 1956 govern branches (places of business) of the foreign companies. Section 592 of the Act provides that a foreign company should file a certified copy of the incorporating document, names and addresses of the directors, full address of the registered office of the company and office in India and addresses of Indian residents authorized to receive services for the company, within 30 days of establishment of its branch in India. Presently, only banking, airline and shipping companies are permitted to open a branch in India on a reciprocal basis and with prior approval of the Government of India. Thus a foreign company cannot establish its branch in India without prior approval and formal registration under the Companies Act. Therefore, the provision of filing above documents within 30 days of establishment become redundant. It is recommended that section 592 of the Act should be repealed.

G. ANTITRUST LAW

Under the MRTP Act, the Monopoly and Restrictive Trade Practices Commission has been entrusted with the responsibility of inquiring into

restrictive and monopolistic trade practices and to make proper remedial order in case of restrictive trade practices against the public interest. The Commission does not have any power to order for division of an undertaking or its parts. However, the Commission can recommend to the government for the same. As regards the monopolistic trade practices, the Commission makes its reports to the government stating its findings and the government may pass necessary orders regarding regulation of production, supply, distribution, fixation of standard of goods etc. [For details please see Chapter III].

Merger or amalgamation, establishment of a new undertaking or expansion of the existing one, acquisition or transfer of shares in contravention with the Act and violation of the orders of the Commission or the Central Government, furnishing false information are criminal offences under the Act.

As mentioned in Chapter III, "monopoly" is not a criminal offence under the Indian law. Monopolistic trade practices can only be inquired into by the Commission and violation of the government's order in respect of the monopolistic practices is a criminal offence. It is true that higher standard of proof required to prove a criminal prosecution, makes the enforcement of law difficult and ineffective but it can not be ignored, that it is the fear of criminal conviction in the society that checks a number of social and economic evils. Therefore, "monopoly" should be made a criminal offence under the Indian law, in addition to the existing provision for remedying it under sec. 31 of the MRTP Act.

H. INCOME TAX LAW

Taxation of income is an important matter for every country. Taxation policy of a country is a crucial source of a country's benefits

from domestic as well as foreign investments. As taxation policy also relates to foreign investment, the government should so frame its policy that it can derive maximum benefits from foreign investment without damaging national industries.

Tables IV and V under Chapter III show that the Corporation tax rates for the year 1985 - 1986 and 1986 - 1987 range from 50% to 70% and 50% to 65% respectively, which is quite high. In addition to income tax, the corporations have to pay a surcharge on the income tax. (However, the surcharge has been abolished, with effect from April 1,1988). As mentioned in Chapter III, because of high tax rates in India, both domestic and foreign companies do not show correct income and foreign companies charge high royalties and technical collaboration fees from their Indian subsidiaries to save income tax, which on one hand, affects government's tax revenue originating from foreign investment and increases the burden of remittance of foreign exchange, on the other hand. Therefore, it is suggested that the government should significantly reduce tax rates and abolish the surcharge immediately. A taxpayer should not be asked to pay more than 50% of his income as tax in any case. This view is also supported by a tax commentator, Mr. U.V. Singh.[19] As mentioned in Chapter III, if the Indian tax rates are kept low, it would encourage foreign investors from countries taxing on "territorial" principle, to make investments in India which would facilitate transfer of technology and increase Indian exports. Further, if undistributed profits of foreign controlled companies are subjected to a lower tax rate, it would help in retaining more profits in India and this retained earning would provide capital for reinvestment and reduce the government's burden of remittance of foreign exchange. The

government should also consider the granting of some tax reliefs to Indian companies operating in foreign countries. If their income arising from foreign sources is not taxed in India i.e. if India applies territorial principle for taxing their income, it would increase foreign exchange flow as the Indian companies would be willing to transfer more funds to India because of tax advantages available to them.

I. APPROVAL PROCEDURE

The foreign investment approval procedure in India is very complicated and time consuming. The government requires a heavy fee along with the application forms and often the cases are not decided within the specified time. It is suggested that the government should simplify the approval procedure and there should be a single application for all the approvals required by an investor (including those issued by the Reserve Bank of India). After the letter of intent has been issued to the applicant, the Secretariate should forward the applications to the appropriate authorities for issuing the respective licenses. The applicant must be given all the licences at the same time from the SIA so that he may expediciously implement his scheme. In addition to this, provision should be enacted for checking delay in according approvals. Approval granting authorities should be bound by a time limit and if these authorities fail to grant approvals whithin a specified time, it should be presumed that the application has been accepted, unless otherwise notified. It is also suggested that the government should abolish the application fee.

J. RECOMMENDATIONS

The whole discussion can be summed up in the form of the following recommendations:

1. The Government of India should enact an Act incorporating its foreign investment and collaboration policy and approval procedure. Lists of the industries where technical and/or financial collaboration may be permitted, should also be annexed to the Act.
2. Because of the government's selective foreign investment policy in the past, India is lagging behind in many areas of technology. The government of India should further liberalize its foreign investment and collaboration policy and open more fields for foreign collaborations, of course, with minority equity participation, in order to achieve international technological standards in all the areas and each case should be decided on individual merits.
3. As recommended by the National Committee (India) on Science and Technology[20], the government should continue to give preference to the outright purchase of technology required by the country and discourage foreign equity participation as far as possible.
4. Despite significant achievements in all fields of technology, India remains yet a developing country and there is a need for continuous flow of technology. Developed countries do not supply complete technical know-how and latest technological innovations because they fear that India can compete with them in the international market on account of its low cost labour and spoil their market. Therefore, India should carefully scrutinize while importing technology, that the supplier is not supplying outdated technology.
5. The present limit of 74 percent of foreign equity participation in export oriented, priority sector, and sophisticated technology

industries should be reduced to 49 percent. The government should not allow majority foreign equity in any industry or venture unless it is 100 percent export oriented.

6. The growing trend of Japanese collaboration, especially in the automobile industry has a danger that India will become technologically dependent on Japan for its highly priced components and spares. Therefore, no technical collaboration with Japanese companies should be approved unless they undertake to manufacture 100 percent components within a reasonable time from their establishment, failing which, Indian industries will become mere assembly lines for Japanese machinery. The time limit for indigenization of companies should be specified in the collaboration approval.
7. Section 592 of the Indian Companies Act, 1956 should be repealed.
8. Monopoly and monopolization should be made criminal offences under the Indian law in addition to the existing civil provision.
9. Corporate income tax rates should be significantly brought down and in no case it should exceed 50 percent. In addition to this, surcharge on the income tax should be immediately abolished.
10. Foreign investors should be granted some relief by subjecting undistributed profits to a lower tax rate. This would also benefit India in terms of availability of capital for reinvestment in industries and transfer of technology.
11. Foreign earnings of Indian companies should be exempt from income tax.
12. Approval procedure for foreign investment and collaboration cases should be simplified. Delay caused in according approvals should be

checked and provision should be made in the law that if the applicant is not informed of approval of his application by the registered mail within the specified time, he should presume that his application has been approved.

13. All approvals required by a foreign investor for establishing a project in India should be issued from the same office and at the same time.

14. The high fee required with the application should be abolished in order to encourage genuine applicants and competitiveness among the technology suppliers.

Footnotes Chapter VI

1 U.V. Singh, "Taxation Aspects of Foreign Investment in India" in Georgia Journal of International and Comparative Law (1981) 133, at 175.

2 Government of India, Ministry of Industry, Statement on Industrial Policy (Dec. 23, 1977).

3 P. Roychoudhary, The Transnationals (1981), at 7.

4 Automobiles: Clearing the Way in India Today, Dt. Feb. 28, 1985, at 63.

5 Automobiles: Revolution on the Road in India Today, Dt. August 31, 1985, at 54.

6 Id.

7 Id.

8 Supra, note 4, at 63.

9 Maruti: Costly Lessons in India Today, Dt. August 31, 1985, at 56.

10 Id.

11 Id.

12 Id.

13 Supra, note 4, at 63.

14 Supra, note 5, at 57.

15 Id.

16 Id.

17 Id.

18 Id.

19 Supra, note 1, at 158.

20 Supra, note 3 at 7.

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APPENDIX I

GOVERNMENT OF INDIA
BHARAT SARKAR
MINISTRY OF FINANCE
VITTA MANTRALAYA
DEPARTMENT OF ECONOMIC AFFAIRS
ARTHIK KARYA VIBHAG

Guidelines For Administering Section 29 of Foreign Exchange Regulation Act, 1973

Dec. 20, 1973

These guidelines will apply to Indian companies having more than 40% foreign holdings and branches of foreign companies operating in India while seeking approval for carrying on any activity of a trading commercial, or industrial nature or for starting fresh activities. These will however not apply to non-residents of Indian origin who have been allowed by the Government to make investment in India on a specific condition that neither the capital nor profits/dividends will be allowed to be repatriated.

Branches of foreign companies (except Airlines and Shipping Companies) seeking approval under the Foreign Exchange Regulation Act will be asked to convert themselves into Indian companies as per policy of Government. This would be without prejudice to any other conditions that may be laid down.

Category	*Proposed Action*
I. Industrial Activities	
(*a*) Indian companies having more than 40% foreign shareholding and branches of foreign companies engaged in the production of items specified in Appendix I of Industrial Licensing Policy, February 1973 or engaged in a predominantly export oriented industry (minimum exports being 60% of total production).	(*i*) Such Indian companies will be allowed to continue on the basis of the existing approval subject to the condition that they will increase, within a specified period, Indian participation to not less than 26% of the equity of the company.
	(*ii*) The branches of foreign companies will be required to convert themselves, within a specified period, into

	Indian companies with Indian participation being not less than 26% of the equity of the company.
	(*iii*) Such companies will be subject to dilution formula as and when they come up for expansion.
(*b*) Indian companies having more than 40% foreign shareholding who have been granted an industrial licence after February 1970 for manufacturing activities in the production of items specified in Appendix I of the Industrial Licensing Policy, 1973 or engaged in predominantly export-oriented industry (minimum exports being 60% of total production).	(*i*) They will be exempt from the provisions of Section 29 subject to the condition that they will increase, within a specified period, Indian participation to not less than 26% of the equity of the company.
(*c*) Indian companies having more than 40% foreign shareholding and branches of foreign companies having a valid industrial licence and engaged in production of items not specified in Appendix I of Industrial Licensing Policy, 1973 but engaged in the manufacuring activities which need sophisticated technology.	(*i*) The extent of foreign shareholding in the existing Indian companies will be considered on merits of each case subject to the condition that they will increase within a specified period, Indian participation to not less than 26% of the equity of the company.
	(*ii*) The branches of foreign companies will be required to convert themselves within a specified period into Indian companies with Indian participation of not less than 26% of the equity of the company.
	(*iii*) In determining whether a technology is sophisticated or not, Department of Science and Technology will be consulted and consideration will be given, *inter alia*, to aspects such as (i) whether

	the technology is used for the manufacture of products which would otherwise necessitate imports, (ii) whether the discontinuance of the manufacture of products with the technology would have adverse impact on the economy, etc.
(*d*) Indian companies having more than 40% foreign shareholding and branches of foreign companies engaged in other manufacturing activities.	(*i*) Such Indian companies will be required to bring down, within a specified period, foreign shareholding to the level of 40%.
	(*ii*) The branches of foreign companies will be required to convert themselves into Indian companies having foreign shareholding not exceeding 40% within a specified period.
	(*iii*) Alternatively, they will be required to change, within a specified period, their character from existing manufacturing activities to predominantly manufacturing activities in the areas specified in Appendix I of Industrial Licensing Policy 1973 or to engage themselves in predominantly export-oriented industries (minimum exports being 60% of total production).
II. Trading Activities	
(*a*) Indian companies having more than 40% foreign shareholding and branches of foreign companies engaged predominantly in internal trading and commercial activities.	(*i*) No fresh foreign equity participation will be permitted.
	(*ii*) Existing Indian companies will be required to bring down their foreign shareholding to 40% within a specified period.
	(*iii*) The branches of foreign companies will be required to convert themselves into Indian companies having

foreign holding not exceeding 40% within a specified period.

(*iv*) In exceptional cases where they have developed expertise, skills, or facilities (distribution network, etc.) which are not readily available indigenously and are contributing significantly to exports, foreign shareholding of more than 40% but not exceeding 74% may be allowed depending upon the merits of each case.

(*v*) Alternatively, they will be required to change, within a specified period, their character from predominantly trading activities to predominantly manufacturing activities in the areas specified in Appendix I of Industrial Licensing Policy, 1973 or to engage themselves in predominantly export-oriented industries (minimum exports being 60% of total production).

(*vi*) If the above alternatives are not acceptable to them, they will be allowed a reasonable time to wind up their business activities in India.

(*b*) Manufacturing companies *i.e.*, Indian companies with more than 40% foreign shareholding and branches of foreign companies engaged in trading activities in respect of products *not* manufactured by them.

(*i*) They will not be denied permission for internal trading in respect of essential or associate products in the overall interest of the consumers as also of development of ancillaries provided the articles so traded are functionally related to the company's main manufacturing activities and constitute relatively a small portion of the overall activities (not exceeding 25% of ex-factory value of the annual produc-

tion or Rs. 5 crores whichever is less). The approval shall also be subject to the condition that the companies shall not be permitted to use, for internal trade, their trade marks or brand names in respect of the products not manufactured by them.

III. Others

Indian companies having more than 40% foreign shareholding and branches of foreign companies engaged in :

(*a*) Construction activities.

(*i*) Indian companies having more than 40% foreign shareholding will be required to bring down their foreign shareholding to 40% within a specified period.

(*ii*) In exceptional cases where they have developed such expertise or skills or technology which is not indigenously available, higher foreign shareholding not exceeding 74% of the equity may be allowed.

(*iii*) Branches of foreign companies will be required to convert themselves into Indian companies with foreign shareholding not exceeding 40% within a specified period.

(*b*) Plantation activities.

(*i*) Tea plantation will, by and large, be treated at par with manufacturing industries specified in Appendix I of Industrial Licensing Policy, 1973 subject to the condition that they will increase within a specified period Indian participation to not less than 26% of the equity of the company.

(*ii*) Branches of foreign companies will be required to convert themselves, within a specified period, in Indian companies with Indian participation being not less than 26% of the equity of the company.

(*iii*) Branches of foreign companies engaged in other than tea plan-

		tation activities will be required to convert themselves into Indian companies with foreign shareholding not exceeding 40% and the Indian companies will be required to bring down their foreign shareholding to 40% within a specified period:
	(c) Consultancy Work	
	(*i*) Technical and engineering consultants.	(*i*) Indian companies having more than 40% foreign shareholding will be required to bring down their foreign shareholding to 40% within a specified period.
		(*ii*) Branches of foreign companies will be required to convert themselves into Indian companies with foreign shareholding not exceeding 40% within a specified period.
		(*iii*) In exceptional cases, if they are engaged in such technology or skills which are indigenously not available, higher foreign shareholding not exceeding 74% of the equity may be allowed on merits.
	(*ii*) Non-technicol consultants	(*i*) So far as management, financial and accountancy firms are concerned and since sufficient indigenous expertise in these spheres is available in the country, the Indian companies with foreign majority shareholding as well as branches of foreign companies will be required to reduce their foreign shareholding to 40% within a specified period.
	(*d*) Manufacturing companies engaged in consultancy work.	(*i*) They will be allowed to act as consultants in respect of those areas in which they have developed specialisation. Such facilities will however not be available to companies predominantly engaged in trading and non-manufacturing activities.
IV.	*Airlines and Shipping Companies*	(*i*) The functioning of branches of air and shipping companies operating in India will be decided on reciprocity basis.
V.	*Miscellaneous*	
	Indian companies having more than 40% foreign	(*i*) The branches of foreign companies will be required to convert themselves, within a specified period, into Indian companies with Indian

shareholding and branches of foreign companies engaged in activities other than those specified herein before	participation of not less than 26% of the equity of the company.
	(*ii*) Indian companies having more than 40% foreign shareholdings will be required to bring down their foreign shareholding to 40% within a specified period.
	(*iii*) In exceptional cases, if they are engaged in such technology or skills which are indigenously not available higher foreign shareholding not exceeding 74% of the equity may be allowed on merits.

Explanatory Notes

(*i*) While giving fresh approvals to the cases in accordance with the above guideline, aspects such as the research and development programme initiated by the Indian company and stipulations which restrict the transfer of technology from the foreign collaborator to the Indian company, restrictions on sub-licensing of technology and stipulations for the acquistion of raw materials and components from the foreign collaborator, existing regulations in respect of the patent law, etc., will be borne in mind.

(*ii*) Where a company is engaged in multi-activity operations, a total view will have to be taken of all the activities in which a company is engaged while considering the question of allowing it to continue to carry on business. The proportion of activity covered by Appendix I of the Industrial Licensing Policy, February, 1973 and those falling outside thereof will be a material consideration. In such cases, if activities outside Appendix I constitute only a minor part of the total activities (not exceeding 25% of ex-factory value of the annual production or Rs. 5 crores whichever is less) it will be allowed to continue on the basis of existing approvals, provided Indian participation is not less than 26% of the equity of the company.

(*iii*) While it will be open to companies primarily falling under Clause I (d) "other manufacturing activities" or Clause II (a) "Trading activities" to change their character and become predominantly manufacturing companies in the areas covered under Appendix I of the Industrial Licensing Policy, February 1973 or other approved categories under Clause I(c), they would have to obtain the requisite Industrial Licence and other Government approvals in the normal way, within the frame-work laid down by Government from time to time.

(iv) In the case of 100% export-oriented units the foreign equity participation of more than 74% may be allowed on merits of each case.

APPENDIX II

Priority Industries

List of Industries included in Appendix I to
Government Press Note dated 2.2.1973
As amended subsequently on 21.4.1982

1. Metallurgical Industries
   1. Ferro alloys
   2. Automotive castings, SG iron castings, steel castings and steel forgings
   3. Non-ferrous metals and their alloys, including aluminium foils.
   4. Sponge iron and Pelletisation.
2. Boilers and Steam Generating Plants
3. Prime Movers (Other than Electrical Generators)
   1. Industrial turbines
   2. Internal combustion engines
   3. Alternate energy systems like solar, wind etc. & equipment therefor.
   4. Gas/hydro/steam turbines from 20 MW to 60 MW,
4. Electrical Equipment
   1. Equipment for transmission and distribution of electricity including power and distribution transformers, power relays, HT-switch gear synchronous condensers.
   2. Electrical motors
   3. Electrical furnaces including industrial furnaces
   4. X-ray equipment
   5. Electronic components and equipment
   6. Component wires for manufacture of lead-in-wires
   7. Hydro/steam/gas generators from 20 MW to 60 MW
5. Transportation
   1. Mechanised sailing vessels upto 10,000 DWT including fishing trawlers
   2. Ship ancillaries
   3. (1) Commercial vehicles, public transport vehicles including automotive commercial three wheeler jeep type vehicles, industrial locomotives.
      (2) Personal transport vehicles;
         (i) Passenger cars;
         (ii) Automotive two-wheelers, and three wheelers. Regarding two wheelers, on expansion of existing units, subject to an export obligation of 25% on additional capacity.
      (3) Specialised automotive components, such as pistons and piston rings, fuel injection equipment; auto electricals, such as starter motors, generators, spark plugs, rear axle assembly, brake and clutch assembly, tyre/tube valves, wheels, for automobiles and bimetal bearings.

6. Industrial Machinery
Industrial machinery including specialised equipment.

1. High performance and high fidelity industrial valves as may be specified by the Ministry of Industry.
2. Centralised lubrication systems ;
3. Gears, gear boxes and couplings;
4. Rolls for paper mills, rolls for rolling mills;
5. Pollution control equipment.
6. Process equipment for utilisation of recycling of wastes.

7. 1. Machine tools, including controls and accessories.
2. Jigs, fixtures, tools and dies of specialised types and cross land tooling.
3. Engineering production aids such as cutting and forming tools, patterns and dies and mining tools.

8. Agricultural Machinery
Tractors

9. Earth Moving Machinery

Earth Moving machinery and construction machinery and components thereof.

10. Industrial Instruments
Indicating, recording and regulating devices for pressure, temperature, rate of flow, weights, levels and the like.

11. Scientific and Electromedical Instruments and Laboratory Equipment.

12. Nitrogenous & Phosphatic Fertilisers falling under

(1) Inorganic fertilizers under '18-Fertilizers' in the First Schedule to the I (D & R) Act, 1951.

13. Chemicals (other than fertilizers)

1. Heavy organic chemicals including petrochemicals
2. Heavy inorganic chemicals
3. Organic fine chemicals
4. Synthetic resins and plastics
5. Man-made fibres
6. Synthetic rubber
7. Industrial explosives
8. Technical grade insecticides, fungicides, weedicides and the like
9. Synthetic detergents.
10. Miscellaneous chemicals (for industrial use only) including :—
    1. Catalysts and Catalyst supports
    2. Photographic chemicals
    3. Rubber chemicals
    4. Polyols
    5. Isocyanates, Urethanes etc.
    6. Speciality chemicals for enhanced oil recovery
    7. Heating fluids
    8. Coal tar distillation and products therefrom
    9. Tonnage plants for the manufacture of industrial gases

10. High altitude breathing oxygen/medical oxygen.
11. Nitrous oxide
12. Refrigerent gases like liquid nitrogen, carbon dioxide, etc. in large volumes
13. Argon and other rare gases
14. Alkali/acid resisting cement compound
15. Leather chemicals and auxiliaries

14. Drugs and Pharmaceuticals
For FERA drug Companies

(a) Drug intermediates from the basic stages for production of high technology bulk drugs.

(b) High technology bulk drugs from basic stages and formulations based thereon with an overall ratio of bulk drug consumption (from own manufacture to formulations from all sources of 1:2).

For non-FERA MRTP companies
All bulk drugs and formulations with an overall ratio of 1:10 between the value of production of bulk drugs and formulations.

15. 1. Paper and Pulp including paper products.
2. Industrial laminates.

16. 1. Automobile tyres and tubes, including automobile tyre tube valves.
2. Rubberised heavy duty industrial beltings of all types
3. Rubberised conveyor beltings.
4. Rubber reinforced and lined fire fighting hose pipes.

17. Plate Glass
1. Float Glass
2. Toughened glass insulators
3. Glass fibres of all types

18. Ceramics
1. Refractories
2. Furnace lining bricks-acidic, basic and neutral
3. Ceramic fibres

19. Cement Products :
1. Portland cement
2. Gypsum boards, wall boards and the like

20. High technology Reproduction and Multiplication Equipment.

21. Carbon and Carbon Products :
1. Graphite electrodes and anodes
2. Impervious graphite blocks and sheets.

22. Pretensioned High Pressure RCC Pipes

23. Rubber Machinery

24. Printing Machinery
1. Web. Fed high speed offset rotary printing machines having output of 30,000 or more impressions per hour.

2. Photo composing/type setting machines.
3. Multi-colour sheet-fed offset printing machines of sizes 18" × 25" and above.
4. High speed Rotogravure printing machines having output of 30,000 or more impressions per hour.

25. Soya Products :

1. Soya Texturised Proteins
2. Soya Protein Isolates
3. Soya Protein Concentrates
4. Other Specialised products of Soya bean
5. Winterised and Deodorised Refined Soya Bean Oil.

Note :—Items of manufacture reserved for the public sector under Schedule—A to the Industrial Policy Resolution, 1956 or for production in the small scale sector, as may be notified from time to time, will be excluded from the application of the list.

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APPENDIX III

GOVERNMENT OF INDIA,
MINISTRY OF FINANCE,
DEPTT. OF ECONOMIC AFFAIRS.

APRIL 16, 1976.

Clarification and Amplification of Guidelines issued for Administering Section 29 of FERA, 1973.

Section 29 (2) (a) of the FERA, 1973, *inter alia* provides that branches of foreign incorporated companies operating in India and Indian companies having more than 40 per cent non-resident interest have to seek Reserve Bank of India's approval for continuing their existing activities in the country.

2. Under the existing guidelines for administering section 29 of FERA, 1973, placed on the Tables of both the Houses of Parliament on 20th December, 1973, Indian companies having more than 40 per cent share holding, and branches of foreign companies can continue their existing activities after increasing, within a specified period, Indian participation to not less than 26 per cent of the equity of the company (in the case of branches after converting themselves into Indian companies), if they are engaged in production of items specified in Appendix I of the Industrial Licensing Policy, 1973, or engaged in a predominantly export-oriented industry (minimum export being 60 per cent of total production) or are engaged in manufacturing or other activities which need sophisticated technology or specialized skills or are engaged in tea plantation activities. All other companies whether engaged in manufacturing or trading activities are required to bring down foreign shareholding to the level of 40 per cent. The functioning of branches of airlines and shipping companies operating in India are, however, to be decided on the basis of reciprocity. It has also been stipulated in the existing guidelines that where a company is engaged in multiactivity operations, a total view will have to be taken of all the activities in which a company is engaged while considering the question of allowing it to carry on business. The proportion of output covered by Appendix I industries of the Industrial Licensing Policy 1973, and those falling outside this will be a material consideration. If activities outside Appendix I industries constitute only a minor part of the total activities of the company (not exceeding 25 per cent of the ex-factory value of the annual production, or Rs. 5 crores, whichever is less), it will be allowed to continue on the basis of existing approvals provided Indian participation is not less than 26 per cent of the equity of the company.

3. The rationale behind the above provisions of the guidelines in allowing non-resident equity holding of more than 40 per cent was to

give due consideration to a company being predominantly engaged in activities in the priority or export-oriented sectors which contribute to the nation's economic and industrial development.

4. There were, however, cases of companies which are engaged in such priority or export-oriented sectors in various proportions which when taken together would come to 75 per cent. While dealing with such applications under section 29 (2) of FERA 1973, the need for clarification of the guidelines was felt. It was, therefore, considered appropriate to spell out clearly that, if the activities of a company under Appendix I industries combined with activities requiring sophisticated technology and exports, accounted for not less than 75 per cent of the total annual turnover, such a company would be allowed to continue its activities subject to the condition that it would increase Indian participation, within a specified period, to not less than 26 per cent of the equity capital of the company.

5. Under the existing guidelines, no distinction has been made between companies, substantially engaged in priority or export oriented sectors (where the extent of such activities is less than the prescribed limits in the guidelines) and other companies engaged in purely trading activities or manufacturing activities in non-priority areas, since all such companies are required to reduce their foreign shareholding to 40 percent. To give due weightage to activities which are in the interest of country's economic development and which form a substantial part of the total output, it was felt that an intermediate resting point might be allowed in such cases. It has, therefore, been decided that companies, whose Appendix I activities together with activities requiring sophisticated technology and exports, account for not less than 60 per cent of total annual turnover, should be treated on a different footing; such companies will now be required to associate Indian equity participation of not less than 49 per cent. Keeping in view the paramount need to encourage exports, a condition will also be stipulated that the company concerned should undertake to export a minimum of 10 per cent of its total annual turnover within a period of two years commencing from the date of approval by the R.B.I.

Similarly, companies with exports exceeding 40 per cent of their total turnover will now be required to associate Indian participation to not less than 49 per cent of the equity of the company. Cases of companies coming up with proposals of substantial export would be considered, on merits, for higher level of equity participation.

6. By the above decisions which have been brought about as a result of experience gained in operating the guidelines, these have been clarified and amplified to the extent necessary, in tune with the spirit of the existing guidelines.

7. The annexure to this statement shows how the provisions of the guidelines have been clarified and amplified.

ANNEXURE To Clarifications and Guidelines

(*a*) If the activities of a company under Appendix I together with activities requiring sophisticated technology and exports, account for not less than 75 per cent of total annual turnover, such a company will be allowed to continue its activities subject to the condition that it will increase Indian participation within a specified period, to not less than 26 per cent of the equity capital of the company.

(*b*) If the activities of a company under Appendix I together with activities requiring sophisticated technology and exports account for not less than 60 per cent of the total annual turnover, such a company will be allowed to continue its activities, subject to the condition that it will increase within a specified period, Indian participation to not less than 49 per cent of the equity of the company. In such cases a condition will be stipulated that the company concerned should undertake to export a minimum of 10 per cent of its total annual turnover within a period of two years commencing from the date of approval by the R.B.I.

(*c*) If the exports of a company account for more than 40 per cent of the total annual turnover, such a company will be allowed to continue its activities subject to the condition that it will increase, within a specified period, Indian participation to not less than 49 per cent of the equity of the company.

(*d*) Cases of companies coming with proposals for substantial exports could be considered on merits, for higher level of equity participation, provided such participation is in the overall interest of the economy of the country.

(*e*) The limit of Rs. 5 crores referred to in Explanatory Note (*ii*) of the existing guidelines will be applicable only in the case of trading activities of multi-activity companies. Thus, the limit of Rs. 5 crores will not be applicable to the non-Appendix I manufacturing activities of multi-activity companies.

(*f*) The ceiling of 25 per cent referred to in Explanatory Note (*ii*) will be raised to 40 per cent and 60 per cent respectively in the types of cases mentioned in (b) and (c) above.

Note : (*i*) The item treated as being covered by Appendix I or sophisticated technology will not be again counted towards exports while clubbing the three together in (a) to (c) above.

(*ii*) The above clarification and amplification of the guidelines will not be applicable to the drug industry.

APPENDIX IV

Illustrative list of Industries where no foreign collaboration, financial or technical is considered necessary

1. *Metallurgical Industries*: *Ferrous.*—Ordinary Castings, Bright Bars Structurals, Welded CI Steel Pipes & Tubes.

Non-Ferrous.—Antimony, Sodium Metal, Electrical Resistance Heating (nickel free alloy), Aluminium litho plates.

2. *Electrical Equipment.*—Electric fans, Common domestic appliances, Common types of winding wires and strips, Iron clad switches, AC motors, Cables and Distribution Transformers.

3. *Electronic Components and Equipments.*—General purpose transistors & Diodes, Paper, Mica and Variable Capacitors, T. V. Receivers, Tape Recorders, Teleprinters, P.A. Systems, Record Players/Changers.

4. *Scientific and Industrial Instruments.*—Non-specialised types of valves, meters, weighing machinery, and mathematical, surveying and drawing instruments.

5. *Transportation.*—Railway wagons, Bicycles.

6. *Industrial Machinery.*—Building and constructional machinery, Oil mill machinery, Conventional rice mill machinery, Sugar machinery, Tea processing machinery, General purpose machinery.

7. *Machine Tools.*—Forged hand tools, General purpose machine tools.

8. *Agricultural Machinery.*—Tractor drawn implements, Power tillers, Foodgrain dryers, Agricultural implements.

9. *Miscellaneous Mechanical Engineering Industries.*

10. *Commercial, Office & Household Equipments of Common Use.*

11. *Medical and Surgical Appliances.*

12. *Fertilizers.*—Single superphosphate, Granulated fertilizers.

13. *Chemicals (Other than Fertilizers).*—Acetic acid ; Acetanilide ; Ethyl Chloride ; Viscose Filament Yarn/Staple Fibre ; Melathion technical ; Sulphate of alumina ; Potassium Chlorate ; Fatty Acids & Glycerine ; Butyl Titanate ; Warfarin ; Silica gel ; Lindane ; Endosulfan ; Phanthoate ; Nitrofen, Ethyl ether ; Plastipeel.

14. *Dyestuffs.*—Benzidine ; O-Toludine ; Carbozole Dioxazine violet pigment ; Cadmium sulphide orange.

15. *Drugs & Pharmaceuticals.*—Caffeine (natural) ; Phenyl Butazone ; Tol Butamide : Paracetamol ; Phanacetin ; Senna extract ; Diasogenin ; Clofibrate ; 4-Hydroxy Cumarin ; Xenthopotoxin ; Calcium Gluconate Choline Chloride ; Glyceryl Gualacolate ; Phenylethyl biguanide hydrochloride ; Scopolamine hydro-bromide ; Niacinamide ; Ortho-lelyl biguanide ; Colchicine : Diazepam ; Sorbitol from dextrose mono-hydrate ; Berberine hydrochloride ; Balladonna ; Acriflavine ; Calcium hypophosphite ; Chlordiazepoxide.

16. *Paper & Pulp Including Paper Products.*

17. *Consumer Goods.*

18. *Vegetable Oils & Vanaspati.*

19. *Rubber Industries.*—Viscose tyre yarn ; Metal bonded rubber ; Latex foam ; Rubberised fabrics ; Bicycle Tyres and Tubes.

20. *Leather, Leather Goods & Pickers.*—Belting-Leather ; Cotton & hair finished leather ; pickers ; Picking bands ; Vegetable tanning extracts ; Fat liquors other than synthetic.

21. *Glass and Ceramics.*

22. *Cement & Gypsum Products.*

Note : List is illustrative and not exhaustive. Clarification of details within the broad headings is the responsibility of Administrative Ministries.

APPENDIX V

Illustrative List of Products which would be Eligible for Special Facilities on the ground of 100% Exports

1. Engineering Goods
   - 1.1 Engineering goods (excluding prime and non-ferrous metals).
   - 1.2 Electronics products including electronic software.
2. Chemicals, Plastics and Allied Products, namely:
   - (a) Inorganic chemicals, organic chemicals & miscellaneous chemicals.
   - (b) Drugs and drugs intermediates including crude drugs.
   - (c) Dyes and dye intermediates.
   - (d) Toiletaries and perfumes (excluding processed talc).
   - (e) Paints and allied products.
   - (f) Safety matches, fireworks, explosives and detonators.
   - (g) Ceramic products.
   - (h) Glass and glassware.
   - (i) Wood products and processed wood.
   - (j) Asbestos, cement including clinkers and cement products.
   - (k) Rubber manufactures.
   - (l) Paper, paper products and stationery.
   - (m) Pesticides and preservatives.
   - (n) Agarbattis.
   - 2.2 Culinary oleo resins.
   - 2.3 Refractories.
   - 2.4 Plastics and Linoleum products.
3. Furniture.
4. Leather and Sports Goods.
   - 4.1 Finished leather and leather manufacture including footwear and paint brushes.
   - 4.2 Sports goods.
5. Food, Agriculture and Forest Products.
   - 5.1 Canned and frozen marine products.
   - 5.2 Processed food, fruits, vegetables and alcoholic and soft beverages.
   - 5.3 Meat and allied products.
   - 5.4 Packaged tea i.e., tea packed in consumer packs of a size upto 1 kg. and instant tea.
   - 5.5 Instant and packaged ground coffee.
   - 5.6 Tobacco manufactures.
   - 5.7 Deoiled rice bran and cotton seed cakes, Sal seed fats and animal foods.
   - 5.8 Mango Kernel extraction and mango kernel oil.

6. Textiles
    1. Carpets.
    2. Readymade garments, knitwear, made-up articles.
    3. Rubberised coir and curled coir.
    4. Khadi.
    5. Natural silk fabrics, garments and made-up articles.
    6. Hosiery.
    7. Handloom fabrics, made-up articles and garments.
7. Miscellaneous
    1. Handicrafts.
    2. Silver and gold jewellery.
    3. Fabricated mica.

APPENDIX VI

LIST OF INDUSTRIES INCLUDED IN THE 1ST SCHEDULE TO THE INDUSTRIES (Development & Regulation) ACT, 1951

1. Metallurgical Industries

A. Ferrous
- (1) Iron and Steel (metal)
- (2) Ferro-alloys
- (3) Iron and steel castings and forgings
- (4) Iron and steel structurals
- (5) Iron and steel pipes
- (6) Special steels
- (7) Other products of iron and steel

B. Non-ferrous
- (1) Precious metals, including gold and silver and their alloys
- (1A) Other non-ferrous metals and their alloys
- (2) Semi-manufactures and manufactures

2. Fuels

- (1) Coal, lignite, coke and their derivatives
- (2) Mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil deverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like
- (3) Fuel gases (coal gas, natural gas and the like)

3. Boilers and Steam Generating Plants

4. Prime Movers other than Electrical Generators

- (1) Steam engines and turbines
- (2) Internal combustion engines

5. Electrical Equipment

- (1) Equipment for generation, transmission and distribution of electricity including transformers
- (2) Electrical motors
- (3) Electrical fans
- (4) Electrical lamps
- (5) Electrical furnaces
- (6) Electrical cables and wires

(7) X-ray equipment
(8) Electronic equipment
(9) Household appliances such as electric irons, heaters and the like
(10) Storage batteries
(11) Dry cells

6. Telecommunications

(1) Telephones
(2) Telegraph equipment
(3) Wireless communication apparatus
(4) Radio/receivers, including amplifying and public address equipment
(5) Television sets
(6) Teleprinters

7. Transportation

(1) Aircraft
(2) Ships and other vessels drawn by power
(3) Railway locomotives
(4) Railway rolling stock
(5) Automobiles (motor cars, buses, trucks, motor cycles, scooters and the like)
(6) Bicycles
(7) Others, such as fork lift trucks and the like

8. Industrial Machinery

A. Major items of specialised equipment used in specific industries

(1) Textile machinery (such as spinning frames, carding machines, powerlooms and the like) including textile accessories
(2) Jute machinery
(3) Rayon machinery
(4) Sugar machinery
(5) Tea machinery
(6) Mining machinery
(7) Metallurgical machinery
(8) Cement machinery
(9) Chemical machinery
(10) Pharmaceuticals machinery
(11) Paper machinery

B. General items of machinery used in several industries, such as the equipment required for various "unit processes"

(1) Size reduction equipment—crushers, ball mills and the like
(2) Conveying equipment—bucket elevators, skip hoists, cranes, derricks and the like
(3) Size separation units—screens, classifiers and the like
(4) Mixers and reactors—kneading mills, turbo mixers and the like
(5) Filtration equipment—filter presses, rotary filters and the like
(6) Centrifugal machines
(7) Evaporators
(8) Distillation equipment

(9) Crystallisers
(10) Driers
(11) Power driven pumps—reciprocating, centrifugal and the like
(12) Air and gas compressors and vacuum pipes (excluding electrical furnaces)
(13) Refrigeration plants for industrial use
(14) Fire fighting equipment and appliances including fire engines

C. Other items of Industrial Machinery

(1) Ball, roller and tapered bearings
(2) Speed reduction units
(3) Grinding wheels and abrasives

9. Machine Tools

10. Agricultural Machinery

(1) Tractors, harvestors and the like
(2) Agricultural implements

11. Earth-moving Machinery

(1) Bulldozers, dumpers, scrapers, loaders, shovels, drag lines, bucket wheel excavators, road rollers and the like

12. Miscellaneous Mechanical and Engineering Industries

(1) Plastic moulded goods
(2) Hand tools, small tools and the like
(3) Razor blades
(4) Pressure Cookers
(5) Cutlery
(6) Steel furniture

13. Commercial, Office and Household Equipment

(1) Typewriters
(2) Calculating machines
(3) Air conditioners and refrigerators
(4) Vacuum cleaners
(5) Sewing and knitting machines
(6) Hurricane lanterns

14. Medical and Surgical Appliances

Surgical instruments—sterilisers, incubators and the like

15. Industrial Instruments

(1) Water meters, steam meters, electricity meters and the like
(2) Indicating, recording and regulating devices for pressures temperature, rate of flow, weights, levels and the like
(3) Weighing machines

16. Scientific Instruments

17. Mathematical, Surveying and Drawing Instruments

18. Fertilisers

(1) Inorganic fertilisers
(2) Organic fertilisers
(3) Mixed fertilisers

19. Chemicals (other than fertilisers)

(1) Inorganic heavy chemicals
(2) Organic heavy chemicals
(3) Fine chemicals including photographic chemicals
(4) Synthetic resins and plastics
(5) Paints, varnishes and enamels
(6) Synthetic rubbers
(7) Man-made fibres including regenerated cellulose-rayon, nylon and the like
(8) Coke oven by-products
(9) Coaltar distillation products like naphthalene, anthracene and the like
(10) Explosives including gun powder and safety fuses
(11) Insecticides, fungicides, weedicides and the like
(12) Textile auxiliaries
(13) Sizing materials including starch
(14) Miscellaneous chemicals

20. Photographic Raw Film and Paper

(1) Cinema film
(2) Photographic amateur film
(3) Photographic printing paper

21. Dye-stuffs

22. Drugs and Pharmaceuticals

23. Textiles (including those dyed, printed or otherwise processed)

(1) made wholly or in part of cotton, including cotton yarn, hosiery and rope
(2) made wholly or in part of jute, including jute, twine and rope
(3) made wholly or in part of wool, including wool tops, woollen yarn, hosiery, carpets and druggets
(4) made wholly or in part of silk, including silk yarn and hosiery
(5) made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres

24. Paper and Pulp including Paper Products

(1) Paper—writing, printing and wrapping
(2) Newsprint
(3) Paper board and straw board
(4) Paper for packaging (corrugated paper, kraft papper, paper bags, paper containers and the like)
(5) Pulp—wood pulp, mechanical, chemical, including dissolving pup

25. Sugar

26. Fermentation Industries

(1) Alcohol
(2) Other products of fermentation industries

27. Food Processing Industries

(1) Canned fruits and fruit products
(2) Milk foods
(3) Malted foods
(4) Flour
(5) Other processed foods

28. Vegetable Oils and Vanaspathi

(1) Vegetable oils, including solvent extracted oils
(2) Vanaspati

29. Soaps, Cosmetics and Toilet Preparations

(1) Soaps
(2) Glycerine
(3) Cosmetics
(4) Perfumery
(5) Toilet Preparations

30. Rubber Goods

(1) Tyres and tubes
(2) Surgical and medical products including prophylactics
(3) Footwear
(4) Other rubber goods

31. Leather, Leather Goods and Pickers

32. Glue and Gelatin

33. Glass

(1) Hollow ware
(2) Sheet and plate glass
(3) Optical glass
(4) Glass wool
(5) Laboratory ware
(6) Miscellaneous ware

34. Ceramics

(1) Fire bricks
(2) Refractories
(3) Furnace lining bricks—acidic, basic and neutral
(4) China ware and pottery
(5) Sanitary ware

(6) Insulators
(7) Tiles
(8) Graphite Ceramics

35. Cement and Gypsum Products

(1) Portland cement
(2) Asbestos cement
(3) Insulating boards
(4) Gypsum boards, wall boards and the like

36. Timber Products

(1) Plywood
(2) Hardboard, including fibre-board, chip-board and the like
(3) Matches
(4) Miscellaneous (furniture components, bobbins, shuttles and the like)

37. Defence Industries

Arms and ammunition

38. Miscellaneous Industries

(1) Cigarettes
(2) Linoleum, whether felt based or jute based
(3) Zip fasteners
(4) Oil stoves
(5) Printing, including litho printing industry

Explanation :—(1) The articles specified under each of the headings Nos. 3, 4, 5, 6, 7, 8, 10, 11, and 13 shall include their component parts and accessories.

Explanation :—(2) The articles specified under each of the headings Nos. 18, 19, 21 and 22 shall include the intermediates required for their manufacture.

APPENDIX VII

Conditions for Exemption from Licensing in respect of Units with Investment in Fixed Assets not exceeding Rs. 50 million

(i) The undertaking should not belong to one or other of the following categories:

(a) Undertakings covered by section 20 (a) of the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, i.e., undertakings whose assets or whose own assets along with the assets of interconnected undertakings are not less than Rs. 200 million.

(b) Dominant undertakings covered by section 20 (b) of the MRTP Act, 1969.

(c) Undertakings belonging to "foreign concerns" i.e., foreign companies, their branches or subsidiaries or companies in which more thad 40 per cent of the paid-up equity is held directly by foreign companies, their branches or subsidiaries or by foreign nationals or non-resident Indians.

(ii) The new unit should not be located within the standard urban area limit of a large metropolitan city having a population of more than one million and in the urban area of a city with a population of more than 0.5 million

(iii) The item of manufacture involved should not relate to one or other of the following categories of industries :

(a) Industries listed in Schedule A of the Industrial Policy Resolution 1956. i.e. Industries reserved for public sector (Annexure II).

(b) Industries subject to special regulation i.e., industries included in Schedules IV and V (Annexure III)

(c) Items reserved for production in the small scale sector (Annexure IV).

(iv) The import requirement by way of raw materials (other than steel and aluminium), and parts and components (after three years of coming into production), does not exceed 15 per cent of the ex-factory value of the annual production or Rs. 4 million, whichever is less.

Provided that :

1. The value of the raw materials and components which are on Open General Licence and which form an essential input for manufacture of articles shall not be taken into account in computing the foreign exchange limits specified above.

2. In respect of raw materials which are not on Open General Licence but which are partly available within the country and partly to be imported, the raw materials mentioned in Schedule VI (Annexure VIII) may be treated as "wholly imported" for the purpose of computing the foreign exchange admissible.

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APPENDIX VIII

LIST OF ITEMS RESERVED FOR PRODUCTION IN SMALL SCALE SECTOR

Sl. No.	Product Code	Name of the Product
	20-21	***Food and Allied Industries
1	201801	Ice cream
2	20210101	(Deleted)
3	202501	Pickles & chutneys
4	202901	Vinegar
5	204200	Rice milling
6	204300	Dal milling
7	205101	Bread
8	20530101	Biscuits
9	209201	Confectionery (except chocolates)
10	21100101	Rape seed oil-except solvent extracted (Other than cases of state agro-cooperatives and growers cooperatives)
11	21100102	Mustard oil except solvent extracted (Other than cases of state agro-cooperatives and growers cooperatives)
12	21100103	Sesamum oil except solvent extracted (Other than cases of state agro-cooperatives and growers cooperatives)
13	21100104	Ground nut oil except solvent extracted (Other than cases of state agro-cooperatives and growers cooperatives)
14	214302	Sweetened cashewnut products
15	216201	Poultry feed
16	219201	Ground and processed spices
16A	219502	Tapioca sago
16B	219504	Tapioca flour
	26	***Textile Products including Hosiery
17	260101	Cotton cloth knitted
18	260102	Cotton vests knitted
19	260103	Cotton socks knitted
20	260104	Cotton undergarments knitted
21	260106	Cotton shawls knitted
22	260199	Other cotton knitted wears
23	260201	Woollen cloth knitted
24	260202	Woollen vests knitted
25	260203	Woollen socks knitted
26	260204	Woollen scarves knitted

Sl. No.	Product Code	Name of the Product
27	260205	Woollen undergarments knitted
28	260206	Woollen caps knitted
29	260207	Woollen shawls knitted
30	260208	Woollen gloves
31	260209	Woollen mufflers knitted
32	260299	Other woollen knitted wears
32A		Art Silk/Man-Made fibre hosiery :—
(1)	260301	Synthetic knitted socks and stocking
(2)	260302	Synthetic knitted underwears such as vest, briefs and drawer
(3)	260304	Synthetic knitted outerwear such as jersey, slipover, pullover, cardigans and jacket
(4)	260306	Synthetic knitted children wear such as baby suits, knicker, frock,f underwear and outerwear
(5)	260309	Synthetic knitted fabric
(6)	260311	Synthetic knitted swim wear such as trunk and costume
(7)	260312	Synthetic knitwear such as scarf, muffler, shawl, cap, ties, blouse and jean
(8)	260313	Synthetic knitted shirt, T-shirt, collar shirt and sports-shirts
(9)	260314	Synthetic knitted hose
(10)	260315	Synthetic knitted gas mantle fabric
(11)	260399	Other synthetic knit wear
33	261102	Stove wicks
34	264104	Readymade garments
35	266901	Cotton belting
36	266902	Belt lacing
37	266903	Measuring tapes—cotton
	27	***Wood and Wood Products
38	27210301	Wooden crates
39	272301	Tea chest plywood
40	273002	Seasoned wood
41	279914	Wooden sewing machine covers
42	273012	Cable drums for AAC & ACSR conductors
43	273013	Tent poles
44	274202	Wooden plugs
45	274301	Handles—wooden and bamboo
46	27440101	Teak fabricated round block
47	276001	Wooden furniture and fixtures
48	276002	Wooden storage cupboards
49	276003	Wooden storage shelves & racks
50	279908	Wood wool slabs
	28	***Paper Products
51	280402	Waxed paper
52	280403	Bituminised water proof paper

Sl. No.	Product Code	Name of the Product
53	280905	Decorative papers
54	280906	Corrugated paper and boards
55	281101	Paper bags
56	281102	Composite containers (unlaminated)
57	28120101	Paper board cartons (unlaminated)
58	281301	Paper cups/plates
59	281902	Paper envelopes
60	281904	Corrugated fibre board containers
61	283102	Paper twines, strings and ropes
62	283201	Paper cones
63	28320201	Paper tubes (except heavy duty resin impregnated conical spinning fulls for textile industry)
64	283901	Drinking straws
65	283902	Paper napkins including facial tissue napkins
66	283903	Gummed tape
67	283906	Teleprinter rolls
68	283907	Stencil paper
69	283908	Tele-tape rolls
70	283909	Splitting of ordinary paper into rolls & sheets
71	283910	Toilet paper rolls and sheets
72	283911	Paper straps
73	283912	Stickers, labels of gummed paper etc.
74	283913	Treated tracing paper
75	283914	Gummed paper for stamps
76	283915	Gummed paper other than for stamps
77	283916	Sanitary towels
78	283917	Transfer labels
79	285002	Exercise books and registers
80	285005	Letter pads
81	285006	File covers and file board
	29	***Leather and Leather Products including Footwear
82	290201	Sole leather
83	290202	Kattai and bunwar leather
84	290302	Picking band leather
85	290303	Leather pickers and other leather accessories for textile industry
86	290401	Vegetable tanned hides and skins—Semi-finished
87	290501	Chrome tanned hides & skins—Semi-finished
88	290602	Lining leather from goat & sheep skins
89	29090201	Laminated leather belting
90	290905	Harness leather
91	291101	Leather shoes
92	291102	Leather shoe upper-closed
93	291301	Leather sandals and chappals
94	292001	Leather garments
95	293101	Leather suitcases and travel goods

Sl. No.	Product Code	Name of the Product
96	293201	Leather purses & hand bags
97	293302	Fancy leather goods and other novelty items
98	293901	Watch straps leather
99	293903	Leather cases and covers of all types
100	299004	Industrial leather gloves
101	299005	Leather washers and laces
	300-302	***Rubber Products
102	26720101	Rubberized cloth—By doctor's blade technique
103	266304	Canvas hoses
104	300301	Tyres—cycles and cycle rickshaw
105	300302	Tubes—cycles and cycle rickshaw
106	300401	(Deleted)
107	300402	Camel-back-tyre retreading—materials (except cold curing tyre materials procured)
108	302101	Surgical gloves latex
109	302102	Hot water bags-rubber
110	302103	Ice bags-rubber
111	302301	Rubber balloons
112	30240201	Rubber hose pipes excluding braided hoses
113	30240202	Rubberized canvas hose pipes—excepting wire braided high pressure hydraulic hoses
114	302403	Rubber tubes
115	302502	Rubber washers
116	30250501	Oil seals-rubber (other than hydro-dynamic seals for high pressure applications)
117	30250901	Rubber thread except bare rubber thread of over 80 gauges and heat resisting rubber threads
118	302510	Rubber eraser
119	302511	Hard rubber battery containers
120	302513	(Deleted)
121	302514	O rings—rubber
122	30260101	Latex foam and latex foam products (except synthetic rubber cots and aprons and lubricating pads)
123	302702	Microcellular sheets
124	302904	Orher dipped latex products except contraceptives
124A	31060102	Ortho aminophenol
125	310651	Rubber blowing agents—hexamine based
	303	***Plastic Products
126	301201	Full PVC footwear-chappals, sandals & shoes
127	30310101	Blow moulded plastic—HDPE/PVC containers—upto 5 litre capacity-excluding stretch below moulded plastic containers
128	303201	Acrylic sheets

Sl. No.	Product Code	Name of the Product
129	30330301	Fibre-glass reinforced plastic products other than the following :— (a) SMC & DMC and its mouldings (b) Continuous filament winding (pipes above 600mm diameter) (c) Pultruded products (d) FRP sheets by continuous process
130	30330401	Hessian, paper and cloth to polyethylene laminations-straight and sandwitched by extrusion coating process except paper to polythene laminations for integrated packing
131	303402	H.D. Polyethelene mono-filament (except for captive use by rope manufacturers)
132	303403	Polypropylene mono-filament (except for captive use by rope manufacturers)
133	30350101	Polyethylene films with thickness less than 0.10 mm except co-extruded films cross-linked polymer films and high density molecular films)
134	30350102	Products of polyethylene film as coloured, printed film & bags
135	303601	Spectacle frames by fabrication or by injection moulding
136	303702	Polypropylene tubular films except biaxially oriented
137	30370301	Industrial items from engineering plastics material by fabrication process only
138	303704	Plastic collapsible tubes
139	303705	Polypropylene box strapping
140	30370601	Polyethylene and PVC flexible hoses except wire braided hoses. Injection moulding thermoplastic products :—
140A	303707	Handles
140B	303802	Soap cases
140C	303804	Buckets
140D	303808	Cups
140E	303810	Lunch boxes
140F	303812	Water jugs
140G	303816	Saucers
140H	303818	Tumblers
140I	303831	Bins of various sizes
140J	303832	Washing bowls
140K	303833	Salad baskets
140L	303834	Dust pans and bins
140M	303835	Hair brushes
140N	303836	Umbrella frames
140O	303837	Hinged hair pins
140P	303838	Babies bath tubs
140Q	303839	Mugs
140R	303840	Plates and dishes
140S	303841	Salt containers

Sl. No.	Product Code	Name of the Product
140T	303842	Toys
140U	303843	Pencil boxes
140V	303844	Coffee pots
140W	303845	Coffee pot covers
140X	303846	Table calendar stands
140Y	303847	Office table trays
140Z	303848	Waste paper baskets
141	30390101	Polyurethane foam
142	30390102	Polyurethane foam products
143	303902	Polystyrene foam products
144	303903	Plastic buttons
145	303904	Fabricated plastic products as follows :
(1)	30390401	Advertising novelties
(2)	30390402	Desk calendar
(3)	30390403	Pen stand
(4)	30390404	Plastic toys
(5)	30390405	Decorative and industrial fixtures.
(6)	30390406	Street lights
(7)	30390407	Corridor lights
(8)	30390408	Passage lights
(9)	30390409	Building models (prototype)
(10)	30390410	Machine models (prototype)
145A	303907	HDPE woven sacks (except sacks manufactured on circular looms)
146	303909	Plastic combs
147	30391201	PVC pipes including conduits-upto 100 mm dia.
147A	30393501	Fittings for PVC pipes including conduits upto 110 mm dia.
148	303913	Zip fastners—non metallic
149	30390501	Compression moulded plastic products excluding decorative and industrial laminates
150	303916	Plastic rain coats
151	303925	Plastic bottle caps
152	303926	Flash light torch cases—plastic
153	303927	Polyester sheets
154	303928	Other thermo welded plastic products such as :
(1)	30392801	Shopping bags
(2)	30392802	Diaries
(3)	30392803	File covers
(4)	30392804	Badges/folders
(5)	30392805	Advertising materials
(6)	30392806	Wallets
(7)	30392807	Passport covers
(8)	30392808	Tool kit covers
(9)	30392809	Medical disposables

Sl. No,	Product Code	Name of the Product
(10)	30392810	Industrial packings for calculators, microphones etc.
(11)	30392811	Inside assembly of brief cases
(12)	30392812	Key chains
(13)	30392813	Identity cards and visiting cards
(14)	30392814	Albums
(15)	30392815	Textile welding for garments
155	303929	Contact lenses
156	303930	Watch straps PVC
156A	303931	P.P. Woven sacks (except sacks manufactured on circular looms) Injection Moulding Thermo Plastic Products :—
156A31	303962	Toilet seats
156A32	303963	Toilet lids
156A33	303964	Letter words
156A34	303965	Pull-up spout poures
156B	307001	Cote (Briquettes (except lignite and for integrated plants)
156C	307002	Coal briquettes (except lignite and for integrated plants)
	31	*** Chemicals and Chemical Products ** Laboratory Chemicals and Re-agents
157	31922001	Ammonium sulphate—Lab.
158	31922002	Ammonium fluoride—Lab.
159	31922003	Ammonium carbonate—Lab.
160	31922004	Antimony potassium tartrate—Lab.
161	31922005	Aluminium sulphate-Lab.
162	31921006	Ammonia solution-Lab.
163	31922007	Cadmium acetate-Lab.
164	31922008	Cadmium carbonate-Lab.
165	31922010	Calcium chloride-Lab.
166	31922011	Chromic acid-Lab.
167	31922012	Cobalt sulphate-Lab.
168	31922013	Cobalt nitrate-Lab.
169	31922014	Cupric nitrate-Lab.
170	31922015	Cupric sulphate-Lab.
171	31922016	Dimethyl sulphate-Lab.
172	31922017	Ferrous Sulphate-Lab.
173	31922019	Lead acetate-Lab.
174	31922020	Lead nitrate-Lab.
175	31922021	Magnesium trisilicate-Lab.
176	31922022	Nickel carbonate-Lab.
177	31922023	Nickel formate-Lab.
178	31922024	Nitric acid-Lab.
179	31922025	Potassium nitrate-Lab.
180	31922026	Potassium chloride-Lab.
181	31922027	Hydrochloric acid-Lab.

Sl. No.	Product Code	Name of the Product
		**Natural Essential Oils
219	315102	Cashew shell oil
220	315104	Sandal wood oil
221	315105	Pine oil-except for composite schemes
222	315107	Eucalyptus oil
223	315109	(Deleted)
224	315110	Lemongrass oil
225	315112	Palm Rosa oil
226	315198	Other natural essential oils
		**Organic Chemicals, Drugs and Drug Intermediates
227	31060101	Para-aminophenol-indl. grade
228	310605	Para dichlorobenzene-balls, cubes etc.
229	310618	(Deleted)
230	310627	Dimethyl sulphate—based on methyl alcohol
231	310628	Pyrazolones
232	31062901	Potassium citrate-indl. grade
233	310630	Other citrates
234	310631	Tartrates
235	310645	Diethyl phthalate
236	310646	Dioctyl phthalate
237	310647	Dibutyl phthalate
238	310648	Dimethyl phthalate
239	310649	Benzyl chloride
240	310650	Benzyl benzoate
240(I)	310656	Niacinamide
240A	310669	Stearate of aluminium
240B	310670	Stearate of mangnesium
240C	310671	Stearate of calcium
240D	310672	Stearate of zinc
240E	310673	Methyl and salicylate (based on purchased salicylic acid)
241	312127	Paint driers—naphthenates octoates, linoleates, etc. of lead, cobalt, manganese, zinc, calcium etc.
242	312405	Chlorinated paraffin wax (upto 60% chlorine content)
243	313120	(Deleted)
244	313125	Paracetamol
245	313131	Glycero phosphates
246	313149	Glycerophosphoric acid
247	313150	Lanolin anhydrous
248	313151	Xanthates
249	313152	Dichlorophenol
249A	31315601	Methyl parabens starting from para hydroxy benzoic acid
249B	31315601	Ethyl parabens starting from para hydroxy benzoic acid

Sl. No.	Product Code	Name of the Product
249C	31319501	Propyl parabens starting from para hydroxy benzoic acid
249D	31319600	Calcium gluconate
249E	316101	Turpentine
249F	316103	Rosin
250	316201	Polyester resins
251	316204	PVC compounds
252	316206	Alkyd resins (except for captive consumption)
252A	31942960	Nicotinic acid
		**Other Chemicals & Chemical Products
253	305301	Wax candles
254	305901	Naphthalene balls
255	310109	Potassium meta bi-sulphate
256	310111	Barium carbonate
257	310112	Barium sulphate
258	310113	Barium sulphide
259	310115	Sodium sulphide excpt as by-product
260	310121	Sodium thio sulphate
261	31012301	Calcium chlorde—Indl. grade (except as a by-product)
262	31012401	Zinc oxide—Indl. grade
263	310126	Aluminium hydroxide GEL
264	310139	Zinc nitrate
265	310301	Nickel sulphate other than manufactured by a primary producer as a by-prodnct
266	310302	Nickel chloride
267	310304	Nickel carbonate
268	310305	Nickel formate
269	310306	Copper sulphate other than manufactured by a primary producer as a by-product
270	310307	Copper nitrate
271	310308	Copper chloride
272	310322	Cadmium oxide
273	310323	Cadmium iodide
274	310325	Cadmium nitrate
275	310329	Cadmium phosphate
276	310330	Barium chloride
277	310331	Barium nitrate
277A	310334	Calcium nitrate except as by-product
278	310336	Zinc chloride
279	310337	Zinc sulphate other than manufactu.ed by a primary producer as a by-product
280	310360	Copper oxy-chloride
281	310361	Copper carbonate
282	310362	Potassium iodide
283	310363	Sodium iodide

Sl. No.	Product Code	Name of the Product
284	310364	Precipitated silica
285	310365	Sulphur powder—other than insoluble, for rubber vulcanisation
286	310407	(Deleted)
287	310409	Sodium thiocynate
288	310412	Magnesium sulphate
289	310424	Electroplating salts compounded
290	310428	Zinc cyanide
291	310435	Cadmium cyanide
292	310444	(Deleted)
293	310445	(Deleted)
294	310446	(Deleted)
295	312117	Artists colours—oil water & wax based
296	312122	Red lead paints
297	312123	Red oxide paints
298	312124	Wagon black paints
299	312125	Graphite paints
300	312126	Paste paints
301	312402	Shoe polish
302	312403	Wood polish/French polish
303	312404	Metal polish
304	312108	Aluminium paints
305	312109	Bitumen based paints
306	312406	Floor polishes
307	312901	Dry distempers
307A	313134	Halogenated hydroxy-quinolines starting from 8-hydroxy quinolines (except for integrated schemes for the manufacture of 8-hydroxy quinolines)
308	314201	Laundry soap
309	314303	Formulated perfumery compounds
310	314401	Tooth paste
311	314402	Tooth powder
312	314601	Hair oils
313	317001	Safety matches
314	318401	Fire works
315	319103	Blue print papers—all types
316	319303	Husked and dehusked guar gum split and meals
317	319501	Animal glue
318	319504	Office gum paste
318A	319602	Saccharine
319	319902	Agarbathies
320	319904	Sodium silicate
321	319701	Sealing wax
322	319906	Industrial adhesives based on starch, gum, dextrin and silicates
322A	319907	Camphor Tablets

Sl No.	Product Code	Name of the Product
323	31990801	Alums/aluminium sulphate excluding manufactute in integrated sulphuric acid plants
324	319921	Potassium silicate
325	319922	Calcium silicate
326	319923	Synthetic adhesives—rubber latex PF OF and PVA based
		***Glass and Ceramics
327	32010101	Fire clay, bricks and blocks containing less than 40% alumina
328		Roofing tiles :
(1)	279936	Roofing tiles-wooden
(2)	303966	Roofing tiles-plastic
(3)	320401	Roofing tiles-clay
(4)	321901	Roofing tiles-glass
(5)	326113	Roofing tiles-granite (excluding tiles of thickness less than 10 mm)
(6)	326135	Roofing tiles-marble (excluding tiles of thickness less than 10mm)
(7)	329202	Roofing tiles-cement concrete.
329		Flooring tiles :
(1)	279937	Flooring tiles-wooden
(2)	303936	Flooring tiles-plastic
(3)	320402	Flooring tiles-clay
(4)	321933	Flooring tiles-glass
(5)	326136	Flooring tiles-marble (excluding tiles of thickness less than 10 mm)
(6)	326137	Flooring tiles-granite (exculuding tiles of thickness less than 10 mm)
(7)	329903	Flooring tiles-cement mosaic
(8)	329204	Flooring tiles-cement concrete
330		Ceramic tablewares and allied items in stone wares, semivitreous wares and earthwares, viz :
	323101	Dinner sets
	323102	Tea sets
	323103	Cups and saucers
	323104	Jars and other containers
	323106	Vases
	323107	Ash trays
	323110	Mugs and bowlers
331	32110601	Glass beads except industrial beads
331A	321202	Simple glass mirrors excludingspecialised glass mirror such as those meant for optical instruments etc.
332	321402	Glass tubings (excepting machine drawn)
333	321408	Scientific laboratory glass ware (excluding borosilicate types)
334	321409	Micro-cover glasses and slides for microscopes
335	321701	Glass bangles

Sl. No.	Product Code	Name of the Product
336	321906	Glass holloware by mouth blown and/or semi automatic process
337	32190901-05	Sodalime silica press glass tumbler, plates, bowls, ashtrays and vases
337A	3219010	Glass marbles (all types)
338	323301	Low tension insulators
339	323904	Chemical porcelain items as follows :
(1)	32390401	Flat tipped basins
(2)	32390402	Round and rectangular type dishes
(3)	32390403	Combustion boats
(4)	32390404	Crucibles
(5)	32390405	Filter funnels for vacuum pressure
(6)	32390406	Gravity filtrations
(7)	32390407	Pipette rests
(8)	32390408	Spotting plates
(9)	32390409	Desicator plates
339A	324201	Lime (other than captive consumption)
339B	324204	Hydrated lime (other than captive consumption)
340	32390101	Plaster of paris (excepting for use as construction material)
341	324902	Chalk crayons including tailors chalk
342	32490501	Plaster boards (excepting for using automatic process)
343	326906	Stoneware jars and bowls—kundi
344	326903	Salt glazed sewer pipes
345	32690101	Asbestos pipes & fittings—for house-hold purposes only and according to ISI specification
346	328904	Glazed tiles upto 10 cms X 10 cms
347	32890501	Reinforced cement concrete pipes upto 100 cms dia.
348	32960101	Graphite crucibles—upto 500 nos.
349	32960801	Silicon carbide crucibles-up to 100 nos.
	33—35	***Mechanical Engineering Excluding Transport Equipment
350	331101	Manhole covers—C.I.
351	331118	Weights
352	331141	Circlips
353	331149	Bright bars
354	33115101	Pressure die castings—upto 0.75 kg.
355	331152	M.S. and C.I. flanges
356	331301	Conduit pipes metallic
357	33130401	Flexible metallic pipe upto 35 mm dia—for non-pressure applications
358	331503	Stranded wires (excluding high tensile prestressed concrete wires)
359	33160101	Machine shop vices
360	33172201	Mechanical jacks upto 30 tonnes
361	33172301	Hydraulic jacks upto 30 tonnes capacity

Sl. No.	Product Code	Name of the product
362	331727	Signal ladders
363	331751	Street light fittings
364	340101	Steel almirah
365	340102	Steel vaults, safes and cash boxes excluding the following items of which detailed specifications are given below :
		(I) Fire Resistant Record Protection Equipment test for two hours upto 1000 °C against the time temperature graph specified by the International Standard Organisation in their specification No. ISOR-834. The test is inclusive of a drop test midway through the fire test. The Cabinet to be tested and certified by the Central Building Research Institute, Roorkee or similar approved testing organisation.
		(II) Fire and Burglar Resistant Safe which can withstand 'Expert Test Attack'.
		'Expert Tets Attack' is defined hereunder as per recognised testing procedure.
		(i) The testing party shall consist of two experienced operators who have studied the sample safe and are fully familiar with its detailed construction and operation. They will also have fully studied the detailed component and assembly drawings of the safe.
		(ii) The tools available shall be all the common hand tools including sledge hammers upto 3.5 kg. size and crow bars upto 1½ metres long power tools will include portable electric impact hammers upto 25 mm size ; portable drill presses or drill holding mechanism to accommodate portable electric drills upto 12mm size ; carbide tipped drills will be used (and not just plain HSS drills). Also power saws upto 200 mm in diameter and hole saws upto 62.5 mm in diameter reciprocating saws with maximum blade length 200 mm.
		(iii) The objective will be of either making a hole of minimum 40 Sq. Cm. or knocking off the lock and wedging open the door.
		(iv) The total above test attack will last for a specific time.
		(III) Jewellers Safe which can withstand 'Expert Test Attack'. 'Expert Test Attack' is defined hereunder as per recognised testing procedure.
		This will be as per the Fire and Burglar Resistant Safe described above, but with the following vital additions :

Sl. No.	Produut Code	Name of the product
		(a) Oxy-Acetylene gas cutting torch will be allowed for attack. The quantity of gas consumed shall be limited to 30 cu.m. of combined total oxygen and fuel gas.
		(b) One Combination Lock is mandatory on these safes. The lock should be manipulation proof and be capable of one million different combinations.
		(c) There shall be provision for fitting a 2 movement time lock.
		(d) The safe will have several automatic re-locking devices activated by componentsbreaking, explosives, very high temperature and severe shock to automatically re-lock the safe. Also in case any lock is dislodged by means of explosives or other means, the safe will automatically re-lock.
		(e) The objective of the attack will be to make a hole of 13 sq. cm.
		(f) The attack is requred to last for twice as long as for the Fire and Burglar Resisting safes.
(IV)		**Safe Deposit Locker :** The locker doors will have milled edges to permit close seating, thus ensuring not only great resistance to crow bar attack but also interchangeability with each other. This is vital from the servicing point of view.
		The locks will be interchangeable between themselves, which is again absolutely vital for servicing purposes. Each lock is jointly controlled by the renter with a renters key ; and by the custodian who has one master key for the entire installation which may be several hundreds of lockers.
		The lock lever combinations shall be computer generated to ensure that no two keys are identical and that its own key alone will open each lock.
		The loss of keys by the renters is a common feature and a system of breaking open (no duplicate keys or records are kept), urgently repairing the door and re-fitting with a new interchangeable lock, are vital servicing matters. Also occassionally there is a loss of the custodian key putting hundreds of lockers in jeopardy. In this case a mechanic has to be deputed to camp at site, customers are called one by one and lockers opened in their presence and the custodians part of the lock mechanisms changed to suit the new master key. This is a major operation.

Sl. No	Product Code	Name of the Product
	(V)	**Safes with Safe Deposit Lockers :** This can be specified as incorporating all the special features of both a Fire and Burglar Resistant Safe and the Safe Deposit Locker as indicated above. This item is used in Banks which do not have their own reinforced vault and also in large hotels as a service to their customers for keeping their valuables. Here the ability for urgent service to hotel guests who may have lost their keys and may have valuables like money, airline tickets and passports, is very vital. One other vital point is that the most popular size is the 2085 mm high unit which weighs around $2\frac{1}{2}$ tonnes, and requires an overhead crane during its manufacture.
366	340103	Meat and food safes—metallic
367	340104	Metal cabinets—all types
368	340201	Steel trunks
369	34030101	Tin containers unprinted—other than O.T.S. and cans upto 18 litre capacity
370	340306	G.I. Buckets
371	34030801	Barrels upto 60 litre capacity
372	34030901	Drums upto 60 litre capacity
373	340322	Tin trays
374	340323	G.I. bath tubs
375	340324	Dust bins
376	340401	Sanitary fixtures – metallic
377	340403	Cocks and valves used as domestic water pipe fittings
378	34040401	M.S. Pipes fittings – upto 100 M.M. dia
378A	34101201	M.S. Storage tanks upto 15000 litres storage capacity (simple type with rivets/welds but excluding pressed ribs)
379	340501	Pressure stove
380	34050201	Wick stoves other than those manufactured in accordance with design nos. 145215, 145216, 145299 (Nutan type stoves) registered in the name of Indian Oil Corpn
381	340601	Hurricane lanterns
382	340605	Signal lamps
383	340606	Hand lamps
384	340902	Shoe tacks
385	340903	Shoe eyelets
386	340904	Umbrella ribs and fittings
387	340906	Zip fasteners – metallic
388	340907	Tin cutters
389	340918	Belt fasteners
390	340919	Snap fastners

Sl. No.	Product Code	Name of the Product
391	340920	Pilferproof caps
392	340921	Gun cases
392A	340922	Crown corks (except for captive consumption)
393	341001	Doors, windows and ventilators-metallic
394	341004	Rolling shutters
395	341011	Lantern posts and bodies
396	342012	Aluminium furniture
397	34200301	Adjustable beds—hospital
398	34200302	Iron and steel cots—all types
399	342004	Storage cupboards—iron and steel
400	342005	Racks—all types including angular racks—iron and steel
401	34200601	wheel chairs for invalids
402	34200602	Steel chairs—all types
403	34200701	Steel tables—hospital
404	34200702	Steel tables—all other types
405	34200801	Trolleys—railway platform drinking water
406	34200802	Trolleys—iron and steel—Hospital
407	342009	Stretchers—Iron and Steel
408	342010	Storage bins—steel
409	342099	Steel furniture—all other types
410	343101	Hacksaw frames
411	343102	Pliers
412	343103	Screw drivers
413	343104	Spanners
414	343106	Hammers
415	343108	Anvils
416	343109	Wood working saws
417	343111	Wrenches
418	343112	Knives and shearing blades (all types including those of metal, paper, bamboo and wood for manual operations)
419	343113	Nail pullers
420	353114	Chisels
421	353115	Pincers
422	343116	Wire cutters
423	343199	Other hand tools for blacksmithy, carpentry, hand forging, foundry, etc.
424	34320101	Bolts and nuts-except high tensile and other special types
425	343203	Rivets of all types including bifurcated
426	343207	Wire adjusting screws
427	343301	Tumbler locks
428	343302	Pad locks
429	343303	Safe/cabinet locks
430	343305	Door locks
431	343306	Locks-bicycles

Sl. No.	Product Code	Name of the Product
432	343399	Drawer locks and suitcase locks
433	343402	Chains lashing
434	343502	Persian wheels
435	343503	Chaff cutters
436	343504	Chaff cutter blades
437	343505	Animal driven implements
438	343506	Crow bars
439	343507	Plough shears/iron ploughs
440	343508	Cultivators
441	343509	Disc harrows
442	343510	Insecticide dusters—manual
443	343511	Insecticide sprayers—manual
444	343512	Forks
445	343514	Hoes
446	343515	Levellers
447	343516	Mowers
447A	345207	Stainless steel utensils
448	343517	Pickers-metallic
449	343521	Hand pumps
450	343522	Seed treaters
451	343527	Head shovels
452	343529	Sickles
453	343531	Seed bins
454	343532	Water lifters
455	343537	Kudali
456	34359901	Other agricultural implements
457	343601	Wire nails
458	343602	Panel pins
459	343603	Wood screws
460	34360401	Machine screws—except socket head and special types
461	343624	Gate—hooks
462	343625	Shoe nails animal
463	343626	Hob nails
464	343627	Builders Hardware
465	343802	Nail cutters
466	343901	Metallic washers
467	343903	Barbed wire
468	345101	Spoons—cutlery
469	345102	Forks—cutlery
470	345103	Table knives/household knives
471	345104	Bread cutters
472	345199	Other cutlery items
473	345201	Domestic utensils—brass
474	345202	Domestic utensils—aluminium

Sl. No.	Product Code	Name of the Product
476	345203	Domestic utensils—bell metal
476	345204	Domestic utensils—copper
477	345205	Domestic utensils—iron
478	345206	Domestic utensils—silver
479	345209	Domestic utensils—bronze
480	345210	Domestic utensils—german silver
481	345301	(Deleted)
482	345406	Gas appliances such as cooking ranges, ovens etc.
483	345407	Gas lighters—mechanical
484	346201	Razors
485	346903	Safety pins
486	346906	Watch straps—metallic
487	34990701	Beam scales
488	34990702	Postal weighing scales
489	349909	Expanded metal
490	34991001	Welded wire mesh-except for expansion of existing units
491	34991101	Wire gauze and wire netting (metallic coarser than 100 mesh size and upto 2 meter width)
492	349914	Steel wool
493	349940	Hair pins
494	349941	Metal fittings for leather goods and garments
495	349942	Ghamelas
496	349943	Blacksmith hearths
497	349944	Brass dampers
498	349945	Measuring tapes—steel
499	349948	Lamp holders
500	350102	Winnowers-upto 5 H.P motive power
501	350103	Wheat and rice threshers—upto 5 H.P. motive power
502	350104	Seed cleaners—upto 5 H.P. motive power
503	350105	Grain driers—upto 5 H.P. motive power
504	350106	Shell huskers—upto 5 H.P. motive power
505	350107	Reapers-upto 5 H.P. motive power
506	350108	Cotton delinting machine-upto 5 H.P. motive power
507	350109	Seed drills—upto 5 H.P. motive power
508	350110	Other agricultural machinery—upto 5 H.P. motive power
508A	35080101	Harvestor, grader, baler and other earth moving blades used in Agricultural machines.
509	350803	Low-speed gear for use in agricultural machines threshers—made of cast iron/mild steel—non heat treated
510	35230101	Diesel engines upto 15 h.p. slow speed
511	353134	Rice and dal mill machinery
512	353201	Oil crushers
513	353202	Oil crusher parts
513A	353804	Cotton ginning knives

Sl. No.	Product Code	Name of the Product
513B	353805	Tea cutting knives
513C	354803	Three knives trimmer and envelope cutters
513D	354804	Clicking knives for leather industry
513E	354805	Chopping knives and lances for match industry
513F	354806	Plastic shredding and granulating knives
513G	354807	Knives and shearing blades (all types including those for metal paper, bamboo and wood for hand operated machines)
513H	354808	Doctor blades
513 I	354809	Stainless steel refiner bar knives
514	35490701	Concrete mixers upto 3 cubic metre capacity
515	354925	Band saw blades—for cutting wooden logs
516	85520101	Room cooler—desert type
517	355819	Air conditioning ducting' louvers, grills and other sheet fabrications in air-conditioning
518	35630301	Centrifugal water pumps (upto size 10 cm×10 cm)
519	35650401	Air compressors upto 5 h.p. for spray painting repair shops
519A	356803	Electro formed screens/liners used in the chemicals and sugar industries
520		(Deleted)
520A	35711701	Hand threading tap holders
520B	35720201	12 mm drilling machine upto 1500 RPM bench and pedestal type
521	35720901	Turning, boring and threading addas—small, single or multiple operation devices
522	35741001	Bench grinder upto 300 mm diameter
523	35750201	Power Hacksaw—mechanical—300 mm blade size
523A	35760301	Screw Presses (manually operated)
523B	35760501	Hand presses (manually operated)
524	357806	Coolant pumps etc
525	357807	Steadies
526	357808	Dog plates
527	357809	Machine vices—machine tool accessories
528	35781101	Carbide-tipped tools—single point brazed-carbide bits purchased from manufacturers
529	358601	Weighing machines/weigh bridges—ordinary
530	358901	File mechanism
531	35910101	Sewing machines—domestic, hand operated, conventional type
532	359203	Household knitting machines
533	359602	Absolute filters for biological and air-conditioning application
534	35993601	Duplicating machines—other than those of special type
535	359940	Bottle washers
536	359941	(Deleted)
537	359942	Sheep shearing machine
538	359943	Double can mixer—dairy eqpt
539	359944	Micro pulveriser—dairy eqpt

Sl. No.	Product Code	Name of the Product
540	359945	Rotary driers – dairy eqpt
541	359946	Basket type centrifuges – dairy eqpt
542	359947	Milk cooling and ghee settling equipment – dairy eqpt
543	359948	Evaporating pans – dairy eqpt
544	359949	Butter churn – dairy eqpt
545	359950	Curd mills – dairy eqpt
546	359951	Agitators – dairy eqpt
547	359952	Storage tanks for dairies
548	359953	All poultry equipments
	86	***Electrical Machines, Appliances & Apparatus Including Electronics **Electrical Appliances
549	36020201	Potential Transformers 11 KV except for captive consumption
550	36020301	Current Transformer 11 KV except for captive consumption
551	360206	Boosters
552	360205	Voltage stabilizers-domestic type
553	36040201	Electric motor 1 HP to 10 HP-AC-except special types
554	360403	F HP motor-AC-excluding special types
555	36100101	PVC wires-domestic type
556	36100201	VIR wires-domestic type
557	363101	Table fans
558	36310401	Exhaust fans upto 400 mm
559	36340201	Miniature vacuum Bulbs excluding auto lamps
560	36340302	Torch Bulbs Other Than Pre-Focused Type
561	363404	Radio Panel Bulbs
562	363405	Cycle Dynamo Bulbs
563	363406	Decoration Bulbs
564	36370101	Electric Irons-Ordinary/Autosteam-Upto 3.63 KG
565	36370201	Electric Stoves Upto 8 KW
566	36370301	Hot Plates/Boiler Plates Upto 3 Nos/Upto 4 KW
567	36370302	Cooking Ranges Upto 4 Hot-Plates/Boiler Plates with/Without Baking Oven Hot Cases Upto 4 Kw
568	36370501	Storage Water Heaters/Geysers, Upto 100 Litres capacity/Upto 3 KW
569	36370601	Electric Kettles-Sauce Pan/Ring Types-Upto 1.70 Litres
570	36370701	Mixers/Grinders Such As Meat Mixer, Juice Extractor, Cap of Jar 1 Litre Max/Upto 500 Watts 30 Minutes Rating
571	363708	Hair Driers—All Types
572	36371101	Hot Cases—Upto 113.2 Litres
573	36371301	Hot Air Blowers/Heat Convector Upto 2 KW Upto Fan Size 26 CM/20 CM X 6 CM
574	36371401	Room Heaters Upto 3 KW
575	36371501	EGG Boilers—Upto 1/2 Dozen Eggs
576	36371701	Water Boilers—Upto 100 Litre Capacity

Sl. No.	Product Code	Name of the Product
577	36371801	Espresso Coffee Makers-Upto 1.70 Litre Capacity
578	36371901	Coffee Percolators-Upto 1.70 Litres
579	36372101	Immersion Water Heaters—Upto 3 KW
580	36372201	Food Warmer Trays—Upto 500 Watts
581	363723	Electric Auto Tandoors
582	36372401	Bread Toasters Ordinary/Auto/Semi-Anto-Upto CAP 6 Slices
583	36372501	Ice Cream Makers Cap. 1 Litre For Use With Domestic Refrigerators
584	36372601	Washing Machines With/Without Spin Driers Upto 3.63 KG Cap/Upto 3 KW
585	363727	Baking Ovens With/Without Provision For Roasting/Grilling Upto 56.6 Litres & 1 KW
586	363801	Electrical Light Fittings Reflectors
587	363804	Electrical Wiring Accessories
588	363911	Electrical light fittings chokes
589	363914	Electrical Light Fittings Starters
590	36391501	A.A. Conductors-Upto And Including 19 Strands
591	36391601	A.C.S.R. Conductors-Upto And Including 19 Strands
592	36620201	Air Break Offload Isolators/ Upto 11K-Including Gang Operated
593	367104	Carbon Brushes Manufactured From Carbon Block
594	369802	Black Adhesive Insulating Tape-Electrical Use
595	369202	Emergency Lamps
596	36990401	Electric transmission Line hardware other than those Manufactured in Malleable Castings
597	36991601	Metal Clad Switches-Upto 100 AMPS/Miniature Circuit Breakers
		**Electronic Eqpt. And Components
598	36420101	Radio/Car Radio-Low Cost Upto Rs. 250/- Each
599	364302	T.V. Antennas
600	364303	TV Tuners
601	364304	TV Games
601A	364305	TV Deflection Components
601B	364701	Pick Up Catridges
602	364802	T.V. Booster Amplifiers
603	364803	Radio & TV Coils
604	364903	Aplifiers For Entertainment And Public Address System
605	364904	Assembly of Loudspeakers
606	364906	Electronic Cigarette Lighters
607	36620301	Invertors & Convertors Upto 500 Volts Amperes
608	36620401	Regulated D.C. power Supplies Upto 0.01% Regulation
609	366206	Electronic Fan Regulators
610	366207	Dimmers & Twilight Switches
611	366905	Digital Clocks
612	36710101	Wire-Wound Resistors other than Professional Types
613	367401	I.F. Transformers

Sl. No.	Product Code	Name of the Product
614	367701	(Deleted)
615	367904	(Deleted)
616	369601	Telescopic Aerials For Radio Receivers
617	369954	Battery Eliminators
618	369959	Electronic Flashgun
619	369970	Hearing Aids
	37	***Transport Equipment and Boats And Truck Body Building
620	370201	Wooden Boats-Body Building
621	374201	Truck Body Building Wooden Structure
622	374202	Seats For Buses And trucks
		***Auto Parts Components And Ancillaries And Garage Eqpt.
623	374612	Window Channels-Auto
624	374616	Wiring Harness
625	374617	Arms And Blades of Wind Shield wipers
626	374706	Grease Nipples
627	374708	Gun Metal Bushes
628	374714	Bulb Horns
629	374717	HUB Caps-Auto
630	374721	Hose pipes And Radiator Hoses-Auto
631	374722	Horn Buttons
632	37472601	Shackle pins-Automobile Use
633	37472902	Auto Leaf Springs Excluding Tapered Leaf Springs
634	374729	Luggage Carrier
635	374737	ornamental Fittings-Auto
636	374742	Brake And pedal pads-Auto
637	37474902	Automobile Radiators (Except For Expansion of Existing units on Merits and Induction Of New Units Based On New/Improved Technology And Excluding Aluminium Radiators)
638	374782	Radiator Grills-Auto
639	374785	Rear View Mirrors-Auto
640	374789	Seat Cushion
641	374768	Steering Wheels-Auto
642	374778	Sun Shades-Auto
643	374780	Side Lamp Assembly-Auto
644	374781	Spot Lamps Assembly-Auto
645	374782	Stop Lamp Assembly-Auto
646	374787	Tail Lamp Assembly-Auto
647	374804	Ash trays-Car Fittings
648	374811	Battery Cables And Fittings
649	374812	Battery Cell Tester

Sl. No.	Product Code	Name of the Product
650	374869	Electrical Fuse Boxes-Auto
651	374870	Electrical Fuses-Auto
652	374874	Exhaust Mufflers-Auto
653	374876	(Deleted)
654	374883	Fuel Tank Caps-Auto
655	374884	Fuel Lines-Auto
656	374881	Handles & Locks—Auto
657	374901	Armature Tester
658	374902	Battery Terminal Lifters
659	374903	Condensers And Resistance Testers
660	374904	Fenders. Spoons and Hammers
661	374905	Feeler Gauges
662	374906	Flaring Tools
663	374907	Gear Flushers
664	374908	Puller of All Types
665	374909	Ring Expanders
666	374910	Ring Compressors
667	374911	Screw Extractors
668	374912	Spark plug Testers & Cleanners
669	374913	Stud Removers—Extractors
670	374914	Toe In Gauges
671	374915	Tyre Valve Pullout Tools
672	374916	Tube Cutters
973	374917	Flangig Tools
674	374918	Valve Lifters
675	374919	Valve Replacing & Resetting Tools
676	374920	Camber Testing Equipment
677	374921	Painting Equipments Like Spray Guns Etc.
678	374925	Grease Guns
679	374926	Tyre Inflators—Both Hand And Foot Operated
680	374868	Electric Horns—Auto
681	374904	Auto Rubber Componnents As Foolow :
1	37499401	Brake pedals
2	37499402	Clutch pedals
3	37499403	Dust Covers
4	37499404	Wiper Blade Components
5	37499405	Windscreen Beedings
6	37499406	Door channels
7	37499407	Rubber Beedings
8	30260701	Rubber Mats
682	375804	Spokes And Nipples—Auto Cycle
683	389913	Sun Visors—Auto
	378	***Bicycle Parts, Tricycles & Perambulators
684	376102	Cycle Frames (except for Captive Consumption)
685	376801	B.B. Axles

Sl. No.	Product Code	Name of the Product
686	376802	B.B. Cups
687	376803	B.B. Shells
688	376804	Bicycle Tube Valves
689	376805	Handles—Bicycle
690	376807	Bolts & Studs And Screw—All Types—Bicycle
691	376811	Bells—Bicycle
692	376812	Carrier—Bicycle
693	376813	Chains—Cycles
694	376814	Chain Wheels & Adjusters—Bicycle
695	376815	Lamps—Bicycle
696	376816	Chain—Covers
697	376817	Cones—Hub Cones—Bicycles
698	376818	Cotter pins—Cycles
699	376819	Crankshafts—Cycles
700	376820	Crank Forgings—Cycles
701	376822	Crown Outer covers—cycle
702	376823	Cycles—Dynamos
703	376824	D. Nuts—cycles
704	376825	Eye Bolt cups—cycle
705	376826	Fork Blade crown cover—cycle
706	376827	Fork Handles—cycles
707	376828	Frame collars—cycle
708	376832	Guide pins—cycle
709	376836	Handle Bar—Grips
710	376838	Hub oil clips—Bicycle
711	376839	Hub Axle Nuts—Bicycle
712	376840	Lock Nuts & Rings—Bicycle
713	376842	Lugs—All Types—Bicycle
714	376843	Mudguards—Bicycle
715	376844	Lamp Brackets—Bicycle
716	376847	Pedal Assembly—cycle
717	376848	Saddle—cycle
718	376850	Shackle Rivets—cycle
719	376851	Stands—cycle
720	376852	Spokes & Nipples—cycle
721	376858	Hubs And cups—bicycle
722	376860	Rims—cycle (except for Captive Consumption)
723	376899	Other cycle Parts And Accessories Except Free Wheel
724	376901	Tricycles
725	376903	Tricycles—Parts & Accessories
726	376904	Perambulator
727	376905	Perambulator parts And Accessories
		**Misc. Transport Eqpt.
728	376999	Hand & animal drawn carriage fittings, tonga parts and wheel Rings

Sl. No.	Product Code	Name of the Product
729	378108	Wheel Barrows
730	378109	Animal–Drawn Vehicles
731	378401	Hand–Drawn carts Of All Types
	38	***Miscellaneous
		**Mathematical And Survey Instruments
732	380302	Alidades
733	380304	Chain Line Base Measuring Apparatus
734	380305	Cross staff
735	380306	Compass prismatic
736	380307	Dividers
737	380308	Drawing Boards
738	380309	Dumpy Levels
739	380310	Drawing Instruments-Engg.
740	380311	Diagonal Scales
741	380312	Engineers Level
742	380313	Engineering Scales
743	380314	French corners
744	380315	Ghat & Reed Tracers
745	380317	Measuring chain
746	380318	Optical Square
747	380319	Protractors
748	380320	Plane Meters
749	380321	Plane Table Equipment
750	380322	Ranging Rod
751	380323	Flat Rule
752	380325	Set Square
753	380326	Slide Rule
754	380328	Sextant
755	380329	Triangular Scales
756	380331	Tee
757	380332	T-Squares
758	380333	Callipers
759	380335	Drafting Machine For Designing Drawing Officers
760	380399	Other drawing mathematical and survey instruments excluding Theodolites
		**Sports Goods
761	261401	All Types Of Sports Nets
762	385101	Shuttle cocks
763	385104	Hockey Sticks
764	38510501	Protective Equipments For sports like Pads, Gloves, etc. Soft Leather Goods
765	385106	Dumbles And Chest Expanders

Sl. No.	Product Code	Name of the Product
766	385107	Cricket and Hockey Balls
767	385108	Foot Ball, Volley Ball and Basket Ball covers
		**Stationery Items
768	319911	Writing Inks & Fountain Pen Inks
769	387101	Ball point pens
770	387103	Fountain pens
771	387104	Pen Nibs
772	387105	Fountain pens And Ball pens Components Excluding Metallic Taps
773	387201	Pencils
774	387401	Hand Stapling Machine
775	387501	Paper pins
776	387601	Carbon paper
777	387602	Typewriter Ribbon
778	387901	Hand Numbering Machines
779	387903	Pencil Sharpeners
780	387907	Pen Holders
		**Clocks And Watches
781	38210101	Clocks-wall clocks, pendulam type both with mech. movement & transistorised movement except lever type clocks
782	38210201	Time-pieces Mechanical Winding With Alarm conventional
783	38280201	Watch dials except ornamental high priced dials-simple dials
783A	38280301	Cast brass watch cases polished and plated
		**Others
784	385101	Umbrellas
785	380108	(Deleted)
786	38011401	Sterlisers-Stainless Steel & Aluminium
787	380225	Microscope Student And Medical Use
788	380401	Water Meters
789	38050301	(Deleted)
790	380504	Revolution counters-Mech.
791	380505	Liquid level controller (Excepting Electronic Type)
792	38060601	Thermometers-Upto 150 °C
793	381301	Photographic Enlargers
794	381401	Projectors including Slide And Overhead projectors but Excluding Profile projectors
795	343802	Wire Brushes
796	389101	Paint Brushes
797	389102	Hair Brushes

Sl. No.	Product Code	Name of the Product
798	389103	Fibre Brushes
799	389104	Tooth Brushes
800	389105	Brushes Natural Bristles
801	389106	Other—Brushes
802	389301	Mechanical Toys
803	389401	Non-Mechanical Toys
803A	389501	Bone Meal (Except captive consumption for 100% Export)
803B	389502	Crushed Bones (—do—)
804	389704	Cufflinks, Tie—pins, Metallic Dress Buttons & Buckles
805	389902	Spectacle Hinges
806	389912	Absorbent Cotton
807	389911	Cigarette Lighters

APPENDIX IX

LIST OF INDUSTRIES GOVERNED BY SPECIAL REGULATIONS

(Schedules IV & V)

Schedule IV

1. Coal falling under '(1), Coal, lignite, coke and their derivatives under the heading "2, Fuels" ;
2. Textile, falling under the heading "23, Textiles (including those dyed, printed or other wise processed) manufactured, produced or processed on powerlooms" ;
3. Milk foods falling under "(2) Milk foods' ; Malted foods falling under '(3) Malted Foods' and Roller flour milling falling under '(4) Flour' under the heading '27, Food Processing Industries" ;
4. (a) Oil seed crushing, falling under '(1) Vegetable oils including ; solvent extracted oils' and (b) Vanaspati falling under '(2) Vanaspati' and under the heading "28, Vegetable Oils and Vanaspati" ;
5. Leather falling under the heading "31, Leather, Leather Goods and Pickers" ;
6. Matches falling under '(3) Matches' under the heading '36, Timber Products" ;
7. Distillation or brewing of alcoholic drinks falling under the heading "26, Fermentation Industries";
8. Hot-rolling of semis, bars, wire rods and structural sections of steel.

Schedule V

1. All qualities of steel manufactured from electrical furnaces based on scrap, falling under (1) 'Iron and steel (Metal)' and '(6) Special steels' under the heading "1. METALLURGICAL INDUSTRIES ; A. Ferrous"
2. Iron and steel pipes and tubes and stainless tubes falling under '(5) Iron and steel pipes' under the heading "1. METATLLURGICAL INDUSTRIES ; A Ferrous" ;
3. Bright bars
4. Tin containers and metal containers
5. Drums and barrels
6. Wires of mild steel, special steel and alloys steel—coated and uncoated
7. Cold and hot rolled strips, sheets and plates of all categories of steel including box strappings

   The above items 3 to 7 fall under '(7) Other products of Iron and Steel' under the heading "1. METALLURGICAL INDUSTRIES ; A. Ferrous"
8. Non-ferrous semis alloys, flat products and extrusions falling under the heading "1. METALLURGICAL INDUSTRIES ; B Non-ferrous"

9. ACC/ACSR Conductors falling under '(6) Elecrrical Cables and Wires' under the heading "5. ELECTRICAL EQUIPMENT".
10. Cold Rolled Formed Section
11. Hamilton Poles
12. Tubular Poles
13. Steel Structurals
14. Sheet Metal Components
15. T.V. Receivers
16. Sheet, Figured and Wired Glass
17. Plywood, Decorative Veneers, Block Boards and Flush Doors
18. Sugar
19. Transmission Line Towers
20. Sewing Machines—hand-operated, Machine operated, industrial or otherwise
21. Dairy Machinery Industry
22. Food Processing Machinery and Equipment Industry
23. All types of Rubber based Conveyor Beltings, PVC Conveyor Beltings and Fan and V-belts
24. Calcium Carbide
25. Caustic Soda
26. Potassium Chlorate
27. Carbon Black
28. Calcium Carbonate
29. Elemental Phosphorous
30. Sodium Chloride
31. Malathion Technical
32. BHC Technical
33. Endosulfan Technical
34. 2-4, D.
35. Synthetic Pyrethroids
36. Aniline
37. Acetanilide
38. Meta-amino Phenol
39. M-Dinitro-benzene
40. Nitro-benzene
41. Para-nitrochloro-benzene
42. Orthonitrochloro-benzene
43. Paranitro-toluene
44. Orthnitrotoluene
45. Metanitrotoluene
46. Alcohol-based Chemicals
47. Pig Iron and Sponge Iron
48. Ferro Alloys
49. Electronic Components
50. Computers, Mini Computer/Micro Processor based system and allied items
51. Digital Electronic Watches
52. Two-way Radio Communications and Allied Equipment

53. Chemicals & Pharmaceutical Machinery including mixers and reactors-Kneading Mills, turbo mixers and the like. Filteration equipment- filter press rotary filters and the like. Centrifugal machines. Evaporators Distillation equipment. Crystallisers, Driers.
54. Borax
55. Boric Acid
56. Chemical Lime
57. PVC Power cables with Aluminium conductors
58. Acetic Acid
59. Distribution Transformers
60. Dry Batteries
61. Welding Electrodes
62. Electric Fans
63. Overhead Cranes
64. Railway Wagons
65. Industrial Gases
66. Formaldehyde
67. Vanadium Pentoxide Catalyst
68. Hydrogen Peroxide
69. Nylon Chips/Nylon Moulding Powder
70. Industrial Explosives including Detonators, Detonating Fuse, Safety Fuse, Gun Powder and Nitro-Cellulose (explosive grade)
71. Polyester chips/Polyester Moulding Powder

APPENDIX X

LIST OF INDUSTRIES RESERVED FOR PUBLIC SECTOR

1. Arms and ammunition and allied items of defence equipment.
2. Atomic energy.
3. Iron and steel.
4. Heavy castings and forgings of iron and steel.
5. Heavy plant and machinery required for iron and steel production, mining, machine tool manufacture and such other basic industries as may be specified by the Central Government.
6. Heavy electrical equipment including large hydraulic and steam turbines.
7. Coal and lignite.
8. Mineral oils.
9. Mining of iron ore, manganese ore, chrome ore, gypsum, gold and diamonds.
10. Mining and processing of copper, lead, zinc, tin, molybdenum and wolfram.
11. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.
12. Aircraft.
13. Air transport.
14. Railway transport.
15. Shipbuilding.
16. Telephones and telephone cables, telegraph and wireless equipment (excluding radio receiving sets).
17. Electricity generation and distribution.

APPENDIX XI

LIST OF INDUSTRIES OPEN TO PUBLIC AND PRIVATE SECTORS

1. All other minerals except "minor minerals" as defined in Section 3 of the Minerals Concession Rules, 1949.
2. Aluminium and other non-ferrous metals not included in Schedule "A" of the Industry Policy Resolution.
3. Machine Tools.
4. Ferro-alloys.
5. Basic and intermediate products required by chemical industries such as the manufacture of drugs, dye-stuffs and plastics.
6. Antibiotics and other essential drugs.
7. Fertilizers.
8. Synthetic rubber.
9. Coal processing.
10. Chemical pulp.
11. Road transport.
12. Sea transport.

APPENDIX XII

NUMBER OF FOREIGN COLLABORATIONS APPROVED BY THE GOVERNMENT OF INDIA DURING THE PERIOD 1977-1983

Country	1977	1978	1979	1980	1981	1982	1983
U.K.	59	61	63	110	79	106	119
U.S.A.	54	59	48	125	85	110	135
F.R.G.	55	58	55	100	74	110	129
Japan	20	28	12	34	27	51	58
Switzerland	23	18	14	38	26	40	47
France	14	21	17	24	23	28	40
Italy	10	13	16	25	18	37	30
G.D.R.	3	8	6	4	4	2	10
Sweden	4	8	5	10	11	16	15
Netherlands	4	10	6	8	9	14	13
Denmark	3	2	3	6	1	4	3
Czechoslovakia	2	1	2	4	-	5	2
Austria	2	2	2	5	8	8	3
Belgium	2	-	3	2	1	4	8
Canada	1	3	2	-	2	1	6
Hungary	3	1	1	2	3	3	2
Poland	1	1	1	2	4	4	1
Yugoslavia	-	-	-	3	1	2	-
Finland	2	1	3	5	2	4	1
Others	5	12	8	19	11	41	23
Total	267	307	267	526	389	590	645

Source: Investing in India , Statistical outline 1984. p.127.

APPENDIX XIII

Foreign collaborations sanctioned in India from 1957 to 1984

Country	1957-65	1966-75	1976-80	1981	1982	1983	1984	1957-84
UK	663	445	347	79	107	119	126	1886
USA	408	450	355	85	110	135	148	1691
Federal Republic of Germany	348	432	328	74	110	129	135	1556
Japan	198	234	104	27	51	58	78	750
Switzerland	110	141	115	26	41	47	30	510
France	93	119	93	23	28	40	38	424
Italy	66	67	72	18	37	30	38	328
Sweden	31	51	33	11	15	15	14	170
Netherlands	35	29	34	9	14	13	14	148
GDR	55	34	28	4	2	10	11	144
Others	361	228	139	33	76	77	120	1034
Total	2358	2230	1648	389	591	673	752	8641

Source: Business India, Feb. 24 to March 9, 1986, at 31.